

A

289 c/12

COLLECTION  
OF THE  
PARLIAMENTARY  
DEBATES

IN  
ENGLAND,

FROM

The YEAR M,DC,LXVIII.

To the present TIME.

VOL. IV.

Printed in the Year, M,DCC,XLI.



COLLECTION  
OF THE  
PARLIAMENTARY  
DEBATES

IN  
ENGLAND.

FROM

THE YEAR

TO THE PRESENT TIME.



VOL. IV.

Printed in the Year MDCCLXII.

# CONTENTS.

PROCEEDINGS of the *House of Commons*,  
*House of Peers*, and in the court of *Queen's-*  
*Bench*, in the great case of *Asby and White*, &c.  
 1703, 1704. 2 & 3 *Ann Reg.* Page 1

Debates of the *House of Commons*, upon the great  
 question, Whether an action lies at common law  
 for an elector, who is denied his vote for mem-  
 bers of Parliament *ibid.*

Speech of Mr. *Harley*, afterwards Earl of *Oxford*

12

Speech of Mr. *Brewer*

16

Case of *Denzil Onslow*, Esq;

20

Speech of Sir *Thomas Powys*

25

— of Sir *John Hawles*, formerly *Solicitor Ge-*  
*neral*

42

— of Sir *Edward Seymour*

50

— of Marquis of *Huntington*, afterwards Duke of  
*Devonshire*

53

— of Mr. *Lowndes*

54

— of Sir *Simon Harcourt*, *Solicitor General*, after-  
 wards Lord *Harcourt*

65

— of Mr. *Dormer*, afterwards a Judge

70

— of Sir *Joseph Jekyll*

76

— of Mr. *Harley*

85

— of Sir *Thomas Meres*

88

— of Mr. *Cowper*, afterwards Earl *Cowper*

89

— of Sir *Humphry Mackworth*

98

— of Sir *Gilbert Dolben*

105

— of Mr. *King*, afterwards Lord *King*

111

— of Sir *Thomas Littleton*

115

— of Mr. *Serjeant Hooper*

116

— of Sir *William Strickland*

117

— of Mr. *Walpole*, now Sir *Robert Walpole* *ibid.*

— of the Marquis of *Hartington*

119

A

Speech

## C O N T E N T S.

Speech of Sir <i>Simon Harcourt</i>	Page 119
— of Sir <i>Christopher Musgrave</i>	120
— of the Marquis of <i>Hartington</i>	122
— of Sir <i>William Strickland</i>	123
— of Mr. <i>St. John</i> , afterwards Lord <i>Bolinbrooke</i>	<i>ibid.</i>
— of Mr. <i>Lowndes</i>	124
The reports of the Lords Committees appointed to draw up the <i>state of the case upon the writ of error</i> , &c.	125
Resolutions of the <i>Lords</i> upon this state of the case	156
Proceedings of the <i>House of Commons</i> , in relation to the <i>Ailesbury-men</i> , committed by the <i>House of Commons</i> , 1704	157
Report of the <i>Lords Journal</i>	173
Report of a conference between the <i>Lords and Commons</i>	178
Proceedings of the <i>House of Commons</i> in relation to the <i>Ailesbury-men</i>	182
Arguments offered by the <i>Commons</i> , at a conference with the <i>Lords</i> , against the resolutions of that house	186
Arguments of the <i>Lords</i> at a free conference	208
The answers of the managers for the <i>Commons</i> to these arguments, with the replies of the <i>Lords</i> , &c.	213
The proceedings at the court of <i>Queen's-Bench</i> , on the <i>Habeas Corpus</i>	237
Mr. Justice <i>Gould's</i> opinion	241
Mr. Justice <i>Powel's</i> opinion	244
Lord Chief Justice <i>Holt's</i> opinion	248
The representation and address of the <i>Lords</i> to the <i>Queen</i>	255
Some of the arguments that were made use of by the <i>Lords</i> in their debates, and at the free conference, to maintain their own resolutions, and answer the objections of the <i>Commons</i>	282
Proceedings	

# CONTENTS.

iii

19 20 22 23 oke id. 24 to or, 25 afe 56 to m- 57 73 m- 78 to 82 nce hat 86 08 to ds, 13 the 37 41 44 48 the 55 the nce, the 82 ngs	<p>Proceedings in the <i>House of Peers</i> and <i>House of Commons</i>, on the case of <i>Charles Bathurst, Esq;</i>  <div style="text-align: right;">Page 298</div> <p>Proceedings in the <i>House of Commons</i> and <i>House of Lords</i>, relating to <i>James Boucher, Gent.</i> 310  <p>The address of the <i>House of Commons</i> to the <i>Queen</i>  <div style="text-align: right;">317</div> <p>The representation of the <i>Lords</i> to the <i>Queen</i>  <div style="text-align: right;">318</div> <p>The <i>Commons</i> address to the <i>Queen</i> 333  <p>The <i>Lords</i> representation against the <i>Commons</i> 343  <p>Precedents out of the <i>Journals of the House of Lords</i>  <div style="text-align: right;">357</div> <p>Precedents out of the <i>Journals of the House of Commons</i>  <div style="text-align: right;">375</div> <p>Proceedings in the <i>House of Lords</i> and <i>House of Commons</i> concerning the <i>Occasional Conformity</i> bill  <div style="text-align: right;">387</div> <p>Debates in the <i>Scotch</i> Parliament 415  <p>The <i>High Commissioner's</i> speech 418  <p>The <i>Lord Chancellor's</i> speech 421  <p>The <i>Earl of Cromarty's</i> speech 424  <p>A speech about the <i>Hanover</i> succession 428  <p>Another speech on the same subject 435  <p>The act of <i>security</i> 443  <p>The <i>High Commissioner's</i> speech on occasion of the passing this act 449  <p>Farther proceedings of the <i>Scotch</i> parliament, 1705  <div style="text-align: right;">451</div> <p>The <i>Queen's</i> letter to the Parliament 452  <p>The <i>High Commissioner's</i> speech 454  <p>The <i>Lord Chancellor's</i> speech 456  <p>Proceedings of the Parliament 457  <p>Proceedings of the <i>English</i> Parliament 464  <p>The <i>Queen's</i> speech <i>ibid.</i>  <p>The <i>Lords</i> address to the <i>Queen</i> 467  <p>The <i>Commons</i> address 471  <p><i>Lord Haversham's</i> speech in the <i>House of Lords</i> 474  <div style="text-align: right;">Debate</div> </p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p></p>
--	---



## CONTENTS.

Debate in the House of Lords concerning the danger of the church	Page 479
The Earl of <i>Rocheſter</i> 's ſpeech on that occaſion	<i>ibid.</i>
Lord <i>Hallifax</i> 's ſpeech	481
Biſhop of <i>London</i> 's ſpeech	482
— of <i>Sarum</i> 's ſpeech	483
Archbiſhop of <i>York</i> 's ſpeech	485
Lord <i>Wharton</i> 's ſpeech	<i>ibid.</i>
Biſhop of <i>Ely</i> 's ſpeech	486
— of <i>Litchfield</i> and <i>Coventry</i> 's ſpeech	<i>ibid.</i>
— of <i>Bath</i> and <i>Wells</i> 's ſpeech	487
Lord <i>Somers</i> 's ſpeech	<i>ibid.</i>
Reſolution of the Lords, that the church was in no danger	488
Proteſt of ſeveral Lords againſt ſaid reſolution	489
The Queen's proclamation concerning the danger of the church	492

## Parliamentary



79  
id.  
81  
82  
83  
85  
id.  
86  
id.  
87  
id.  
no  
88  
89  
of  
92

Parliamentary Debates.

LII. PROCEEDINGS of the House  
of COMMONS, House of PEERS, and in the  
Court of Queen's Bench, in the great Case  
of ASHBY and WHITE, &c. 1703,  
1704, 2 & 3 Ann. Reg.

MATTHEW ASHBY, having commenced and prosecuted an action at common law, against *William White* Mayor of *Aylesbury*, and others, the constables of that town, for refusing to receive his vote at an election of Burgesses to serve in Parliament, for said borough, but being cast, he brought a writ of error into the house of Lords, who, upon strict examination of witnesses, and upon mature deliberation, gave judgment in favour of *Ashby*. The Commons looking upon these proceedings as an incroachment on their privileges, proceeded as follows.

DEBATES of the House of COMMONS,  
upon the great Question, *whether an action*  
*lies at common law for an Elector, who is*  
*denied his vote for Members of Parliament.*

Lunæ 17 Die Januarii, 1703.

THE house being informed, that there had been an extraordinary judgment given in the house of Lords upon a writ of error from the court

of Queen's-bench, in a cause between *Matthew Ashby* and *William White*, wherein the privileges of the house were concerned, appointed some of their members to search the journals of the house of Lords as to their proceedings upon the said writ of error, and to report the same to the House.

They also ordered the same members to inspect the journals of the house of Lords, as to what they had done formerly in the case of *Soame* and *Barnardiston*; and likewise to report that matter to the house.

*Martis 18 die Januarii, 1703.*

The house ordered, that the members who were appointed to search the journals of the house of Lords, as to their proceedings upon a writ of error from the court of Queen's-bench, in the cause between *Ashby* and *White*, should likewise search the several offices of the court of Queen's-bench, for the record of the judgment, and all other proceedings there in that cause, and report the same to the house.

*Jovis 20 die Januarii, 1703.*

Ordered, that the report, with relation to the proceedings of the house of Lords and court of Queen's-bench, in the case of *White* and *Ashby*, should be made on the morrow Morning.

*Veneris 21 die Januarii, 1703.*

Mr. *Freeman* reported, that the members appointed to search the Lords journals, touching their proceedings upon a writ of error from the court of Queen's-bench, in a cause between *White* and *Ashby*, and what the Lords had done in the case of *Soame* and *Barnardiston*, had searched the same accordingly; and he read in his place what they found there-  
in,

in, and he delivered the same at the table, where the same was read. And,

Mr. *Brewer* also reported, that the members appointed had also searched the offices of the court of Queen's-Bench, for the judgment and proceedings there in the case of *Ashby* and *White*, and had obtained a copy of the record of the judgment, which he delivered in at the table.

# A COPY of the Record inter ASHBY & WHITE, & al.

*Placita coram Domino Rege apud Westmonasterium de Termino Sancti Hilarii, Anno Regni Domini Willielmi Tertii, nunc Regis Angliæ, &c. decimo tertio, Rotulo 460.*

*Bucks fs.* MATTHEUS ASHBY ponit loco suo Robertum Greenway juniorem Attornatum suum versus Willielmum White, & Richardum Talboys, Willielmum Bell, & Richardum Heydon, de placito transgressionis super Casum.

*fs.* Willielmus White, Richardus Talboys, Willielmus Bell, & Richardus Heydon ponunt loco suo Johannem Burnham Attornatum suum versus Mattheum Ashby de placito predicto.

*fs.* Memorandum quod alias scilicet Termino sancti Michaelis ultimo preterito coram Domino Rege apud Westmonasterium venit Mattheus Ashby per Robertum Greenway juniorem Attornatum suum & protulit hic in Curia dicti Domini Regis tunc ibidem quandam Billam suam versus Willielmum White, Richardum Talboys, Willielmum Bell & Richardum Heydon, in custodia Marefchalli &c. de placito transgressionis super Casum, & sunt pleg. de proseguendo scilicet Johannes Doe & Richardus Roe: quæ quidem

Billa sequitur in hæc verba ; scilicet Bucks ff. Mattheus Ashby queritur de Willielmo White, Richardo Talboys, Willielmo Bell & Richardo Heydon, in custodia Mareschalli Mareschallæ Domini Regis coram ipso Rege de existentibus pro eo, videlicet quòd cum vicesimo sexto die Decembris Anno Regni Domini Willielmi Tertii nunc Regis Angliæ &c. duodecimo è Curia Cancellariæ ipsius Domini Regis nunc apud Westmonasterium in Comitatu Middlesexie emanavit quoddam breve ipsius Domini Regis nunc tunc Vicecomiti Comitatus Bucks predicti directum, recitando quod dictus Dominus Rex de advisamento & assensu Concilii sui pro quibusdam arduis & urgentibus negotiis eundem Dominum Regem statum & defensionem Regni sui Angliæ & Ecclesiæ Anglicane concernentibus quoddam Parliamentum suum apud Civitatem suam Westmonasterii sexto die Februarii tunc proximo futuro teneri ordinaverit & ibidem cum Prelatis Magnatibus & Proceribus dicti Regni sui colloquium habere & tractatum ; Idem Dominus Rex nunc eidem tunc Vicecomiti Comitatus Bucks per dictum breve preceptum firmiter injungens quòd facta Proclamatione in proximo Comitatu suo post receptionem ejusdem brevis tenenda de die & loco predictis duos Milites gladiis cinctos magis idoneos & discretos Comitatus predicti & qualibet Civitate Comitatus illius duos Cives & de quolibet Burgo duos Burghenses de discretioribus & magis sufficientibus libere & indifferenter per illos qui hujusmodi Proclamationibus interforent juxta formam Statuti inde editi & provisi eligi & nomina eorundem Militum Civium & Burghensium sic eligendorum in quibusdam Indenturis inter ipsum tunc Vicecomitem & illos qui hujusmodi electionibus interforent inde conficiendis licet hujusmodi eligendi presentes forent, vel absentes, inseri, eosque ad dictos diem et locum venire



nire faceret; ita quòd iidem Milites plenam & sufficientem potestatem pro se & Communitate Comitatus illius ac dicti Cives & Burgenfes pro se & Communitatibus Civitatum & Burgorum predictorum divisim ab ipsis haberent ad faciendum & consentiendum his que tunc ibidem de communi Consilio dicti Regni ipsius Domini Regis nunc (favente Domino) contigerint ordinari super negotiis antedictis, ita quòd pro defectu potestatis hujusmodi seu propter improvidam electionem Militum Civium aut Burgenfium predictorum dicta negotia infect. non remanerent quovismodo & Electionem illam in pleno Comitatu ipsius tunc Vicecomitis factam distincte & apertè sub sigillo suo & sigillis eorum qui Electionibus illis interforent eidem Domino Regi nunc in Cancellarium suum ad dictos diem & locum certificaret, indilatè remittens eidem Domino Regi alteram partem Indenturarum predictarum eidem brevi consutarum una cum brevi illo; quod quidem breve postea & ante predictum sextum diem Februarii in brevi predicto mentionatum, scilicet vicesimo nono die Decembris, anno duo decimo supradicto, apud Burgam de Aylesbury in dicto Comitatu Bucks, cuidam Roberto Weeden Armigero adtunc Vicecomiti ejusdem Comitatus Bucks deliberatum fuit in forma Juris exequendum; Virtute cujus quidem brevis predictus Robertus Weeden Vicecomes Comitatus Bucks predicti ut prefertur tunc & ibidem existens postea & ante predictum sextum diem Februarii scilicet tricesimo die Decembris Anno duodecimo supradicto apud Burgum de Aylesbury predictum in dicto Comitatu Bucks fecit quoddam preceptum suum in scriptis sub sigillo ipsius Roberti Weeden Officii sui Vicecomitis Comitatus Bucks predicti Constabulario Burgi de Aylesbury predicti directum, recitantem diem & locum Parliamenti predicti tenendi, proinde eos requirens &



eis in mandato dans quòd facta Proclamatione  
 infra Burgum predictum de die & loco in eodem  
 precepto recitatis causarent liberè & indifferen-  
 ter elegi duos Burgenfes Burgi illius de discreti-  
 oribus & magis sufficientibus per ipsos qui hu-  
 jusmodi Proclamationibus interfèrent juxta for-  
 mam Statuti in talibus casibus editam & provi-  
 sam & nomina dictorum Burgenfium sic electorum  
 licet presentes forent vel absentes inferi in qui-  
 busdam Indenturis inter dictum Vicecomitem &  
 illos qui haberent interesse in hujusmodi Electi-  
 onibus, & quod eos venire faceret ad diem &  
 locum in eodem precepto recitatos, ita quòd  
 dicti Burgenfes haberent plenam & sufficientem  
 potestatem pro se & Communitate Burgi pre-  
 dicti ad faciendum & consentiendum his quæ  
 tunc ibidem de Communi consilio dicti Regni  
 (favente Domino) contingerent ordinari super ne-  
 gotiis antedictis ita quòd pro defectu hujusmodi  
 potestatis aut propter improvidam electionem  
 Burgenfium predictorum dicta negotia infecta  
 non remanerent & quòd electionem indilate ei-  
 dem tunc Vicecomiti certificarent, mittentes ei-  
 dem Vicecomiti alteram partem indenturarum pre-  
 dictarum dicto precepto annexarum ut idem Vice-  
 comes eandem certificaret dicto Domino Regi  
 in Cancellaria sua ad diem & locum predictos;  
 quod quidem preceptum postea & ante predic-  
 tum sextum diem Februarii scilicet eodem tri-  
 cesimo die Decembris anno supradicto apud  
 Burgum de Ailesbury predictum in dicto Comi-  
 tatu Bucks eisdem Willielmo White Richardo  
 Talboys Willielmo Bell & Richardo Heydon  
 ad tunc & usque ad & post retornatum ejusdem  
 brevis Constabulariis Burgi de Ailesbury predicti  
 existentibus in forma Juris exequendum delibera-  
 tum fuit; quibus quidem Willielmo White Ri-  
 chardo Talboys Willielmo Bell & Richardo  
 Heydon ratione Officii sui predicti Constabula-  
 riorum

riorum Burgi predicti executio precepti illius de jure ad tunc & ibidem pertinuit, virtute cujus quidem precepti ac vigore brevis predicti Burgenses Burgi predicti existentes in ea parte debite premoniti postea & ante predictum sextum diem Februarii scilicet sexto die Januarii anno duodecimo supradicto apud Burgum de Ailesbury predicti coram eisdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon Constabulariis Burgi predicti assemblati fuerunt ad duos Burgenses pro Burgo illo eligendos secundum exigentiam brevis & precepti predictorum ac durante assemblatione illa ad intentionem illam & antequam hujusmodi duo Burgenses virtute brevis & precepti predictorum electi fuerunt scilicet die & anno ultimis supradictis apud Burgum de Ailesbury predictum in comitatu predicto idem Mattheus Ashby ad tunc & ibidem existens Burgens & Inhabitans Burgi predicti & Eleemosinas ibidem aut alibi ad tunc aut antea non recipiens sed debite qualificatus & intitulatus existens ad suffragium suum ad eligendum duos Burgenses pro Burgo predicto secundum exigentiam brevis & precepti predictorum dandum coram eisdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon quatuor Constabulariis Burgi illius quibus tunc & ibidem debite pertinuit ad suffragium ipsius Matthei Ashby de & in premissis capiendum & allocandum parat. fuit & obtulit suffragium suum dare pro eligendo Thomam Lee Baronettum & Simonem Mayne Armigerum duos Burgenses pro Parlamento illo virtute & secundum exigentiam brevis & precepti predictorum, ac Suffragium ipsius Matthei Ashby ad tunc & ibidem de jure debuit admitti, et predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon sic Constabularii Burgi predicti tunc & ibidem existentes ad tunc & ibidem requisiti fuerunt per ipsum Mattheum Ashby ad suffragium

ipſius Matthei Aſhby predictum in premiſſis recipiendum & allocandum, iidem tamen Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon ad tunc & ibidem ut preſertur Conſtabularii Burgi predicti exiſtentes premiſſorum non ignari ſed machinantes & fraudulentem & malitioſe intendentes eundem Mattheum Aſhby in hac parte damnificare & de privilegio ſuo & in premiſſis predictis impedire & totaliter fruiſtrare eundem Mattheum Aſhby ſuffragium ſuum in ea parte dare ad tunc & ibidem obſtruxerunt, & ad tunc & ibidem penitus recuſaverunt eundem Mattheum Aſhby ſuffragium ſuum ad eligendos duos Burgenſes pro Burgo illo ad Parlamentum predictum dare permittendum ac ſuffragium ipſius Matthei pro electione illa non receperunt neque allocaverunt ac duo Burgenſes de Burgo illo pro Parlamento predicto Mattheo Aſhby ſic ut preſertur excluſo ſine aliquo ſuffragio ipſius Matthei Aſhby ad tunc & ibidem virtute brevis & precepti predicti electi fuerunt in enervation. predicti privilegii ipſius Matthei Aſhby de & in premiſſis predictis. Unde idem Mattheus Aſhby dicit quod ipſe deterioratus eſt & damnum habet ad valentiam ducentarum Librarum & inde producit Secutam, &c.

Et modo ad hunc diem ſcilicet diem Veneris proxim. poſt Octabas ſancti Hillarii iſto eodem Termino uſque quem diem predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon habuerunt licentiam ad Billam predictam interloquendi & tunc ad reſpondendum, &c. coram Domino Rege apud Weſtmonaſterium veniunt tam predicti Mattheus Aſhby per Attornatum ſuum predictum quam predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon per Johannem Burnham Attornatum ſuum: Et iidem Willielmus White Richardus Talboys Willielmus Bell

&amp;

& Richardus Heydon defendunt vim & injuriam quando &c. Et dicunt quòd ipsi non sunt inde culpabiles & de hoc ponunt se super Patriam & predictus Mattheus Ashby similiter &c. Ideo ven' inde Juratores coram Domino Rege apud Westmonasterium die Jovis proximè post octabas Purificationis beate Marie Virginis & qui nec &c. ad recognitionem &c. quia tam &c. idem dies datus est partibus predictis ibidem &c.

Postea continuato inde processu inter partes predictas de placito predicto per Juratum Patrie inde inter eos. in respectu coram Domino Rege apud Westm. usq; diem Mercurij proximò post Quindenam Pasche extunc proximam sequentem nisi Justiciarii Domini Regis ad Assisas in Comitatu predicto capiendas assignati prius die Lune nono die Martii apud Aylesbury in Comitatu predicto per formam Statuti, &c. venerint pro defectu Juratorum &c. ante quem diem dictus Dominus Willielmus Tertius nuper Rex Anglie &c. diem suum clausit extremum ac etiam ante eundem diem loquela predicta adjournata fuit per breve Domine Anne nunc Regine Anglie &c. de communi adjournamento coram eadem Domina Regina apud Westmonasterium usq; ad die Pasche in tres septimanas ad quas quidem tres septimanas Pasche coram eadem Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum & prefati Justiciarii coram quibus, &c. miserunt hic Recordum suum coram eis hic in hæc verba, scilicet, Postea die & loco infra contentis coram Edwardo Ward Milite Capitali Barone Scaccarij Domine Anne nunc Regine Anglie, &c. & nuper Capitali Barone Scaccarij Domini Willielmi Tertii nuper Regis Anglie & Thoma Knight Armigero hac vice associato eidem Edwardo Ward, & Thoma Bury Milite uno Barone Scaccarij dicte Domine Regine nunc & nuper uno Barone Scaccarij dicti nuper Regis Justiciariis



Justiciariis ipsius Domine Regine ad Assisas in Comitatu Bucks capiendas assignatis per formam Statuti, &c. presente prefato Thoma Bury non expectato virtute brevis de si non omnes, &c. venerunt tam infra nominatus Mattheus Ashby quam infra scripti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon per Attornatos suos infra contentos & Juratores Jure' unde infra fit mentio exacti similiter venerunt qui ad veritatem de infra contentis dicend. electi triati & jurati dicunt super Sacramentum suum quòd predicti Willielmus White Richardus Talboys, Willielmus Bell and Richardus Heydon sunt culpabiles de premissis in narratione infra scriptis interius eis impositis modo & forma prout predictus Mattheus interius versus eos queritur. Et assidunt dampna ipsius Matthei occasione infra contenta ultra Misas & custagia sua per ipsum circa Sectam suam in hac parte apposita ad quinque libras & pro Misas & Custagiis illis ad quadraginta solidos; sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur, dies inde datus est prefato Mattheo Ashby coram Domino Rege apud Westmonasterium usq; diem veneris prox' post crastinum Sancte Trinitatis de Judicio suo inde audiendo eo quòd curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum; sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usq; diem veneris proximum post tres septimanos Sancti Michaelis de judicio suo inde audiendo eo quòd curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium



nasterium venit predictus Mattheus Ashby per Attornatum suum predictum, sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur, dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usq; diem Sabbati proximo post Octabas Sancti Hiliarii de Judicio suo inde audiendo, eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum, sed quia curia dicte Domine Regine nunc hic de Judicio suo de & super premissis reddendo nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usq; diem Mercurii proximum post quindenam Pasche de Judicio suo inde audiendo, eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum, sed quia curia dicte Domine Regine nunc hic de judicio suo de & super premissis reddendum nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usq; idem veneris proximum post crastinum Sancte Trinitatis de judicio suo inde audiendo eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum sed quia curia dicte Domine Regine nunc hic de judicio suo de & super premissis reddendo nondum advisatur dies inde datus est prefato Mattheo Ashby coram Domina Regina apud Westmonasterium usq; diem Sabbati proxime post tres septimanas sancti Michaelis de judicio suo inde audiendo eo quod curia dicte Domine Regine nunc hic inde nondum,

dum, &c. Ad quem diem coram Domina Regina apud Westmonasterium venit predictus Mattheus Ashby per Attornatum suum predictum super quo visis & per curiam dicte Domine Regine nunc hic plenius intellectis omnibus & singulis premissis maturaq; deliberatione inde habita consideratum est quod predictus Mattheus Ashby nil capiat per Billam suam predictam sed pro falso clamore suo sit inde in misericordia, &c. Et predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon eant inde sine die, &c.

Mr. Speaker, (Mr. *Harley*, afterwards Earl of *Oxford*) after the reports were over, told the house, that he thought it to be his duty to put them in mind of the great consequence and importance of this matter, and that it behoved them to take very great caution in their proceedings, not only that the grounds and foundation be good, but also that the method and manner of treating it, be according to the antient usage and custom of Parliament: And to that end he desires the house would give him leave to state this matter, as it appeared to him, and according to what occurred upon the sudden to his memory, that the house might take proper methods upon this occasion.

Mr. Speaker then proceeded to give the house an account of the state of elections by custom or common law, and that the great alteration in point of elections, was in the beginning of *Hen. IV's* time, since whose reign the returns for Parliament have been made by indenture. That by the statute of 7 *H. 4.* there is a method prescribed of election and return, and the occasion he took to be this: *H. IV.* came to the succession of the crown by the deposition of *R. II.* when the Parliament was sitting. That Parliament was continued to *H. IV's* time: For  
tho'

tho' in the rolls it was called a new Parliament, and returns were made, as by the Sheriffs of the counties, and also by the boroughs, as if it was a new Parliament; yet it was the same Parliament, for they were the same men, and there were too few days between one Parliament and the other, to have a new election. But *Henry IV.* having made such an extraordinary step, he would not leave it as a precedent to be found out. Afterwards, when times were a little more settled, in his seventh year, and that practice was necessary to be condemned, it was provided, at the great complaint of the Commons, that it should be done by indenture, that the same or like deceit should never be put upon the kingdom afterwards, and one part was to be kept below. This continued for about four years, when there was another complaint of the proceeding of Sheriffs (he said he need not mention the regulation of forty shillings a year, and some other things which are not directly to this case) and upon that there was a penalty put upon the Sheriffs of a hundred pounds, which he took to be in the eleventh year; and it was put under the inquiry of Judges of assize, and so it stood all that King's reign, 'till *H. V.* and then there was another law made for electors and elected, that they should be all resident. Some of the law books give a pretty construction of it, that tho' there was such a law, yet the custom of Parliament was to be the rule. But he said, he thought it to be a better construction, that it being then reckoned a service, and a hard service, none but the residents in the borough were compellable. Thus it continued, till about *H. VI's* time, and then if the Sheriffs had made a wrong return, if indicted or prosecuted at the assizes, there was to be immediate execution for this hundred pounds, without any traverse. Upon this there was a statute to allow the Sheriff a traverse for this hundred pound, and that he should not be liable to it till he was legally convicted; so

it

it stood 'till about a year afterwards, that the Parliament thought it necessary to make another act about 8 H. 6. And then there was a great complaint again of the ill proceedings of Sheriffs: And the law was enforced again, and it was declared who should be the electors; and the Sheriff was made liable to the penalty of a hundred pound, and imprisonment without bail or main prize, and it was inquirable by the Judges of assize. Another statute was made the 10 H. 6. which inforceth the manner of elections, so it stood. Then 23 H. 6. there are two statutes, one relating to the wages of Knights, Citizens and Burgesies, and how they should be levied; another reciting the statute of H. V. and H. VI. and it says, that there were not sufficient penalties on Sheriffs, who besides that sometimes they sent no writs to boroughs, made insufficient returns, &c. And the Mayors and Bailiffs were guilty of the same; and therefore over and above the first penalty of a hundred pounds, they laid another penalty a hundred pounds more, which was to the plaintiff, with costs of suit; and this was to be tried before the Judges of assize, and at the courts at *Westminster*, and at the sessions; and the action is to lie either for a Knight, or Burges, or any other person that would bring the same, but within a time limited, three months from the commencement of the Parliament. Thus elections stood in point of law 'till the modern alteration, within every body's memory. And he hoped whatever time Gentlemen took this matter into consideration in, they would do it as became the house of Commons, and examine all particulars, as well as the Judgments of law, and that they would do what became the house of Commons, and that no body would see the dignity of the house of Commons impair'd. And however differences were between them in other things, they would



would be unanimous in preserving the rights of the Commons, and of doing it in a right and justifiable manner: And offered to their consideration, whether it would not be best to proceed in the old method, by going into a grand committee for the courts of justice to consider this matter, and that by taking this course, they would walk in the steps of their predecessors, and avoid many inconveniencies, which were easily to be foreseen would happen, by taking another course.

But it being moved and seconded to consider of the said reports in a Committee of the whole house, the question was put, and carried, that the house on *Tuesday* then next following, would resolve itself into a Committee of the whole house, to consider of the said reports.

*Ordered*, That the same members do also search the offices of the courts of Queen's-bench, what proceedings were there in the case of *Barnardiston* and *Soame*, and for a copy of the record of the judgment in that case, and report the same to the house.

*Lune 24 Januarii, 1703.*

Mr. *Brewer* reported, that the members appointed to search the offices of the court of Queen's-bench, as to what proceedings were there in the case of *Barnardiston* and *Soame*, and for a copy of the judgment in that case, had searched the same accordingly; and he presented to the house a copy of the said judgment, the consideration whereof was referred to the Committee of the whole house, who were appointed to consider of the report relating to the case of *Ashby* and *White*.

*Martis*



*Martis 25 Januarii, 1703.*

This day the house was resolv'd into a Committee of the whole house, to take into consideration the report of the Lords journals touching their Lordships proceedings on a writ of error in the case between *Albby* and *White & al.* and also touching their Lordships proceeding in the matter mentioned in the petition of Mr. *Bathurst*; in which last case of Mr. *Bathurst*, as it was alledged, their Lordships had taken upon them an original jurisdiction in controuling an order made by the court of Exchequer, for the filing of a record that had been several years lodged in Mr. *Grange's* chamber of the *Temple*. But the Committee in the first place agreed to go on with the business of *Albby* and *White*; and the debate of the matter was carried on with great order and temper, and was to the effect following.

Mr. *Freeman* in the chair.

Mr. *Brewer*. Sir, we are now in a Committee of the whole house upon the consideration of the case of *Albby* and *White*; which I take to be a matter of the last consequence to the privileges of the house of Commons, which I think are dangerously invaded by the Lord's pretence of judicature upon them. But as I don't doubt every gentleman here thinks it is his duty to support and maintain the just rights and privileges of this house, as intrusted by those who sent us hither; so we shall do it in such a manner as will consist with, and maintain a due correspondence with the Lords. I shall open the true state of the case, with the Judgment given upon it in *Westminster-Hall*, and some of the reasons which, in my opinion, support that judgment; and then speak to the reversal of it by the Lords, (which, with submission, I take to be a new attempt on their Lordships to bring this, and all our privileges before them in judgment) which, I believe, neither  
this,

this, nor any other house of Commons will endure, nor want will or power to relieve themselves against such an usurpation.

The plaintiff declares against the defendants, that whereas on the 26th day of *December*, in the 12th year of King *William* the third, a writ issued to the Sheriff of *Bucks*, commanding him to cause to be elected two burgesses for *Aylesbury*: The Sheriff directed his precept accordingly to the constables, to whom it belonged to execute that precept; and the burgesses being assembled, and the plaintiff duly qualified to give his vote, he offered to give it for Sir *Thomas Lee* and Mr. *Mayne*, but the defendants falsely and maliciously in tending to defeat him of that privilege, did refuse to receive it, which he lays to his damage, and issue being joined, that cause was tried at the Assizes, and a verdict for the plaintiff, and 5 *l.* damages.

The fact being thus tried, the matter in hand (that is to say, whether this action is maintainable by the rules of law or not) was often argued by council learned at the bar, and afterwards considered by the judges in the *Queen's-Bench*, and upon their mature consideration, judgment was given for the defendants, that is, that the plaintiff had no good cause of action.

Now I understand the chief reason was, for that the right of voting in such cases hath ever been, and ought to be cognizable and determinable by the house of Commons, and not elsewhere; for by the law and usage of Parliament, the house of Commons have heard and determined the right of their own elections, and consequently and necessarily the right of the electors to vote; and for this purpose, at the opening of all Parliaments, a Committee of elections is nominated of members of our own, to hear and determine of such right of elections, to whom petitions (after presented to the house) are referred; and if any elector had been refused his vote

in the country, he is, notwithstanding, allowed his vote here, in case he had right, and it shall avail the candidate as much as if the vote had been received below; and the Committee, after judgment upon the case, report to the house all the special matter, and their resolutions; where the whole matter may be afresh debated, and the house agree, or disagree, with the Committee, as shall appear reasonable; so that this determination and method of trial hath two digestions, and more likely to be well founded than that of a common jury, who we know are made by under Sheriffs, and often of persons so corrupted or ignorant, that new trials are often granted by the Judges. But it may be objected, that no single petitioner will be received by the house: In answer to this, I say he may; and I have known petitions touching elections preferred by a very few persons, and by the same reason may by one: I am sure we have no order of the house against it; and if gentlemen object that no single petition of this nature was ever received, if they will shew me when it was offered, I will shew them when it was received; I believe they cannot shew me it was ever refused. But I would ask if they can shew me that such an election as this was ever brought against the officer, as in this case. I am sure they cannot, and which, in our law, is allowed a good argument, that no action lies; especially it being a case which cannot be presumed, but may happen very often, almost in every election: And, I believe, there never was a Parliament called, but frequent occasions might have been taken for such an action, and better founded than this of the plaintiff's, who was a poor hostler, and removed from that parish, by the order of two Justices, as being likely to become chargeable. But it seems our ancestors reposed a confidence in their representatives to have right done them in such case: They sought not relief from common juries. And

And what is now done by this attempt? Why the Judges upon their oaths say, that they have no cognizance of the cause; but notwithstanding, the Lords say they have no cognizance, and reverse that judgment; and the consequence of that is, the Lords will judge of this our undoubted privilege, never, 'till now, drawn into question; and by that reason and law, the Lords may sit in judgment upon all other our privileges, and thereby we become depending upon them; which some without doors, I find, are willing to submit to; for that they say, where one is deprived of his right, he ought to have damages, which the house of Commons cannot give. I allow, where one is injured, he shall have relief by our law, in one place or other, but we have not one shop to cure all distempers. The Queen's-Bench relieves chiefly in matters criminal; the common pleas in civil pleas between party and party; the Exchequer in matters of revenue; Chancery, in cases of fraud; and in the case in question, relief may be had (as said before) in the house of Commons by law and usage of Parliament, which all lawyers know is a very considerable, known, and approved part of the laws of *England*. And tho' no damages are usually given here, yet the officer, for misbehaviour, and arbitrarily refusing votes who had right, may be, and has been punished by the power and authority of the house, and even at common law; as when an Alderman is refused by the Mayor, or other person who ought to admit him, the remedy is by *Mandamus*, which tho' it is chargeable to the person injured, yet I do not know any damages are given him, otherwise than that the party injured is admitted, which is a relief, the Alderman having what he complained for: And so the Elector, his vote is allowed as good as if the constable had took it. And by the way, give me leave to observe how small a relief the new devised remedy by damages is: I dare affirm and demon-



strate, that the plaintiff in the case in question is above 100 *l.* out of pocket, more than the costs and damages recovered, which I take to be *infelix victoria*. But if Gentlemen say, the poor hostler could not expend so much, I believe so too; but if at the expence of any great man, I think it is less justifiable, to make a tool of that poor fellow, perhaps in order to enlarge a jurisdiction.

I must confess, I take the case of the elected to be much stronger than the case of the electors; and yet, in such cases, relief at common law was always denied, as in the case of Sir *Samuel Barnardiston* and *Soame*, there the Sheriff made a double return, and in the case of Mr. *Onslow*, \* a false return; and the persons injured by those returns were put to

\* The CASE of DENZIL ONSLOW, Esq; was tried at the assizes holden for *Surry* on *Wednesday* the 20th day of *July*, in the year of our Lord 1681. at *Kingstown* upon *Thames*, before the Lord Chief Justice of *England*, Sir *Francis Pemberton*.

#### The DECLARATION.

DENZIL ONSLOW, Esq; had brought his action on his case in the court of Common Pleas, against *William Rapley*, late bailiff of the borough of *Haselmere*; thereby setting forth, that *Haselmere* was an ancient borough that used to send Burgesses to Parliament, that a writ issued to the Sheriff of *Surry* to cause Knights and Burgesses to be chosen for the Parliament to be held the 17th day of *October*, anno 31 *Caroli. Regis*. The Sheriff made a precept to the borough of *Haselmere*, to choose Burgesses. That *August* 31 anno 31 *Caroli secundi*, the plaintiff was duly elected one of the Burgesses, and returned by indenture with Sir *William Moore*. That the defendant intending to deprive the plaintiff of the honour and benefit of his election, did by another indenture return Sir *William Moore*, Bart. and *James Gresham*, Esq; as duly elected, whereas the said *Gresham* was not duly elected; whereby the plaintiff was hindered from sitting in Parliament, and put to great charge to assert his right, to his damage of 200 *l.*

After not guilty pleaded, upon evidence given on both sides at the trial, the case appeared to be thus.

The

to very great charges, and kept long from their seats in the house, and yet at common law could never obtain a relief. The Judges were of opinion (as they now are in the case of the Elector) that it was a matter of parliamentary cognizance, of which

C 3

they

## The CASE and Evidence.

At the election in this borough for the last Parliament at *Westminster*, there were four competitors, viz. Sir *William Moore*, the Plaintiff, Mr. *Dorington*, and Mr. *Gresham*. The electors meeting and voting, the poll was demanded, granted, and taken: The defendant took time to peruse and consider the poll, until the afternoon; and having considered of it, came again to the place of election, and declared the Plaintiff and Sir *William Moore* had the majority of the ancient and lawful Burgesses, and proclaimed them two to be duly elected, and sealed an indenture thereof accordingly; and Mr. *Gresham* being then present, opposed not the same, but desired that Sir *William Moore* (with regard to his title and quality) might be first named in the indenture, although (as was then admitted) Mr. *Onslow* had the Majority of him; which was done accordingly, Mr. *Onslow* readily and generously consenting to the doing thereof.

That about a week or a fortnight after, the bailiff was prevailed with to seal and return another indenture, whereby Sir *William Moore* and Mr. *Gresham* were returned as elected. Whereupon Mr. *Onslow's* right to sit was controverted, and he suspended from sitting; and was put to his petition to the house of Commons, who upon hearing of the whole matter, and consideration had of the indirect dealing of the defendant and others, declared Mr. *Onslow* duly elected, and committed the defendant; and Mr. *Onslow* sat in the last Parliament at *Westminster* for that borough, and that Mr. *Onslow* had been at great charges to clear his election.

*First*, the defendant's council insisted on the statute of 1 H. 5. cap. 1. That a person elected must be free, resident, and dwelling within the borough; to which it was answered, and resolv'd by the court, that little or no regard was to be had to that ancient statute, for as much as the common practice of the kingdom had been ever since the contrary; and it was the way to fill the Parliament-house with men below the employment: And the objection was disallowed.

*Secondly*, it was agreed unto by the parties and by their council on both sides, that the right of choice of Burgesses for this borough

they were not competent judges. And should we now admit this matter to be determined by the courts below, what great confusion and inconvenience would follow? I presume no body will pretend to exclude the jurisdiction of the house of Commons, in

borough to Parliament, lay in the burgage Freeholders, residing, and inhabiting within the borough, and none others.

Then the plaintiff's council insisted and proved, that there voted for him thirteen having good and unquestionable votes; unto one whereof, the defendants council excepted, for that he before the election had mortgaged his estate; which the party himself present in court denied upon oath; and the court was of opinion, it had not been a good objection, if true, so long as the mortgager continued the possession, and had the benefit of redemption in him.

The defendant's council said, there voted for Mr. *Gresham* fourteen, having good votes: Which if so, would have made a majority; but the plaintiff's council excepted to six of the fourteen, as being no good electors, for one of them lived not within the borough; which was proved by ancient reputation and perambulation, that the house where he lived was left without the bounds. As to the other five, the objection was, they were no real burgage tenants; and that if any conveyances had been made to them of burgage lands, they were lately made, and fraudulently contrived, to make votes against an election: And because the defendant's council could not deny but these conveyances were lately made, the court put the defendant to produce and prove them, which was done, and upon reading of them, it appeared, two of the five were made after the test of the Parliament writ, and three of them, in order to carry on Sir *Philip Floyd's* election in the borough about five years since. Two of them were conveyances by one *Vallor*, who had a garden about thirty rods, and conveyed to each of his two sons a piece of it, containing about ten rods, of which they had made jointers to their wives, each share being worth at best 2 s. *per annum*. Another of the five was made by the father who had a close containing two acres, and made a conveyance to his son of about a quarter of an acre, which always after lay undivided, and was constantly enjoyed by the father. Another conveyance was made by a son-in-law to his father-in-law, of a cart house. The last conveyance was to one *Jackson*, of a little tenement: But it was proved that collateral security was given to re-convey, and that the grantor had repaired. As to all five, there appeared several badges of fraud, as a continued possession in the grantors,

&c.

in this case; and yet if they judge one way, and the courts below another, and neither have power to supercede or reverse the determination of the other, under what uncertainty will the officers and all parties concerned lie? Whereas, in other cases,

C 4

where

&c. and the several confessions of the purpose and intent of making them for the elections.

The court censured such proceedings as evil and unlawful: Mr. *W.* (Recorder of G) one of the defendant's council, stood up to justify these proceedings, and said, it was part of the constitution of our government to do so. At which the court seemed very angry, and wondered that any one, especially a man of the gown, should say so, and said, do you think our government hath no better constitution? With which the Gentleman not being satisfied, he was told by the court, he deserved to be taken notice of for saying so, and that he seemed to have advised to have the thing done.

To conclude the evidence, the plaintiff's council deliver'd into court ten or twelve several conveyances, that were proved by the party that wrote them, to have been made by Mr. G's order, to make so many votes at a former election, wherein Mr. *Gresham* was concerned; and the election being over, they were cancelled and delivered up; concerning which Mr. *Gresham* endeavoured to say something by way of excuse, but was told by the court, it was too bad to be excused; and it was well an act of general pardon had passed since this was done, else he should have answer'd it in another place. During the whole time of the trial, the same was managed with great patience and circumspection; for so soon as the cause was opened by the plaintiff's council, the court perceiving the nature of it, commanded silence and attention in the jury: The court declaring it was of great weight, as great as any that ever came there to be tried. And the evidence being fully given on both sides, the court, by way of direction, told the jury, that the plaintiff need not, as this case is, prove any express malice in the defendant; for it shall be intended when a man shall do such an evil thing as this is, contrary to his own knowledge, and declaration made upon the election, and afterwards also; (for it was proved against him, by one or two witnesses, that a little time before this trial, he did confess Mr. *Onslow* duly elected, and that he had told Mr. *Gresham* what would come of it.) And the court further told the jury, that this was a cause of moment, and deserved more than ordinary consideration; and that the making votes by such means was a very evil and unlawful thing, and tended to the destruction of the



where one court errs, a superior court reverses; but here both adjudications shall stand together, tho' inconsistent the one with the other.

But 'tis said in this case, the action lies, because the defendant refused the plaintiff's vote *maliciose*  
*& fal-*

the government, and debauching of Parliaments: And although some of the conveyances were made some time before this election, to serve a turn at a former choice; yet that they were fraudulent, and void in their creation, and ought not to be made use of at any time against any other person; and that it was senseless to think such practices were part of the constitution of the government, or to imagine that persons whom we intrust with our lives and fortunes ought to be made and chosen by such evil devices: and that such practices deserve to be severely punished, and directed the jury to give signal damages: Whereupon the jury withdrew, and after a short stay, gave a verdict for the plaintiff, and 50 l. damages.

And the court, in the course of the evidence, having observed one *Billinghurst* to be much concerned in the proof and management of their fraudulent deeds, conceived him to be privy to much of the practice thereabouts, and commanded him to stay in court until the jury had given in their verdict; which when they had done, the court required him to find sureties to appear in the court of *King's-Bench* next *Michaelmas* term, to answer to an information touching the said misdemeanor; and in the mean time to be of good behaviour, which accordingly he did do; and Sir *William Moore*, and Sir *George Woodruff* (whom he had served last election at *Hafelmere*) were his sureties. And the court required the plaintiff, Mr. *Onslow*, to see that an information be preferred; which he promised to do: And the court declared it was a very great offence, and should be severely punished.

I shall give a few instances of what the house of Commons have done in former ages to punish and prevent evils about elections.

1. *Anno 20 Jacobi*. Doctor *Harris*, Minister of *Blechingley* in *Surry*, for misbehaving himself by preaching, and otherwise, about election of members of Parliament, upon complaint, was called to the bar of the house of Commons, and there as a delinquent on his knees, had judgment to confess his fault there, and in the county, in the pulpit of his parish church, on *Sunday* before the sermon.

2 *Anno 20 Jacobi*, *Ingrey*, Under-Sheriff of *Cambridgeshire*, for refusing the poll, upon the promise of Sir *Thomas Steward* to defend

& *false*: I take those to become words of course, and no evidence of that is given to the jury.

Sir, to conclude, the house lately passed a resolution, that no Lords should intermeddle at any of our elections: But if this be allowed as law, they may at the last, judge and make (for ought I know) all our elections: But for my part, I am for continuing the possession of this, and all our other just privileges, as derived down to us from our predecessors, who ever enjoyed and exercised them as now we should; and I hope before we rise we shall think of some remedies, and not lie wholly under the power or mercy of the Lords.

Sir *Thomas Powys*. Mr. *Freeman*, I believe I should hardly have rose up in this matter, but that I think it more particularly my duty to speak to this thing, if it were possible, than any other; for in truth, I have had a more particular opportunity of knowing the nature of this case and the proceedings in it, and what the

defend him therein, kneeling at the bar, received his judgment, to stand committed to the Sergeant at arms, and to make submission at the bar, and acknowledge his offence there, and to make a farther submission openly at the quarter-sessions, and there also to acknowledge his fault.

3. *Anno 20 Jacobi*, the Mayor of *Arundel*, for misbehaving himself in an election, by putting the town to a great deal of charge, not giving a due and general warning, but packing a number of electors, was sent for by a warrant, and after ordered to pay all the charge; and the house appointed certain persons to adjust the charges.

4. And lastly, 3 *Car. 1.* Sir *William Wrey*, and others, Deputy-Lieutenants of *Cornwall*, for assuming to themselves a power to make whom they pleased Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the country letters for the trained bands to appear at the day of the election, and menacing the country under the title of his Majesty's pleasure; had judgment given upon them to be committed to the *Tower*. 2. To make a recognition of their offence at the bar of the house upon their knees; which was done. 3. To make a recognition and submission at the assizes in *Cornwall*, in a form drawn by a Committee. See this case in a folio pamphlet, printed 1681.

consequences

consequences of it will be, than many others have had.

I must acquaint you I was of council in this cause, in the house of Peers, upon the writ of error with *White*, and the other constables that were prosecuted in this action, and did to my power defend what I took to be the rights and privileges of this house.

I would stand right in the opinion of every body; for what I did there for my client in the course of my profession, I do not think my self obliged to maintain here; for then it was my duty to do my best for him as his council, but now he hath done with me, and I have done with him in this place.

It hath been to the great honour of some Judges in *Westminster-hall*, who have argued in cases below at the bar, and have been brought on the bench before the cause hath been determined, that they have argued at the bar one way, and when upon the bench, have given judgment another way against their very clients, and thereby done their duty in both places.

Now, when I have said this, I hope I do stand fair and clear, that I now speak as a member of the house of Commons.

You are upon a point which I wish had never happened, for there is nothing I enter upon with greater reluctancy that what looks like a dispute with the other house; for no man pays a greater honour to the house of Peers, and to every Peer there, than I do; however, as I am instituted, I shall endeavour to maintain the rights of this house. And I do say, if the Peers of *England* can determine all our properties at law upon writs of error, and all our rights in equity upon appeals; and if they can determine all our elections in consequence of this action (as I am of opinion they may, if this action prevails) they have a greater power than ever that house had in the days of their noble ancestors, when they were in the greatest grandeur.

I will

I will shew you what will be the ill consequences, and I think it very fit for you to take this matter into consideration, if there be any way to come at it. *First*, I cannot deny, but generally speaking, a man has right to bring his action at law; but then I hope, though a man hath a right to bring an action, yet he cannot bring it in detriment to any other man's privilege; for if a member of this house be sued in time of privilege, though a person have a right to such action, yet he cannot prosecute it in breach of the privilege of such person, much less can a man prosecute an action in breach of the privilege of this house. And suppose this should come before the Lords in question by writ of error, and they should be in possession of the cause; sure every determination of the Lords upon a writ of error, is not without more ado to be conclusive to the Commons in their rights and privileges, so as that they may not take an alarm, and be concerned if all their privileges are about to be taken from them. Suppose any member of this house, (as I think by the privileges of this house he may,) should in this house have just occasion to take notice of some great misdemeanor in any great Officer of the crown, and should assert matters highly intrenching on the honour of a Peer of *England*; and suppose when the Parliament was up, the Peer should bring his action of *scandalum magnatum* against the member, at law, for words that he had spoken here, and lay them as spoken elsewhere, (for in a transitory action he may) and he should justify that they were spoken in the house of Commons, where by the privileges of the house, freedom of speech is allowed; and suppose judgment in that case, (as in this it was) should be given against the plaintiff, and afterwards this by a writ of error should be brought before the Peers, and they should reverse this judgment, and give judgment for the plaintiff; can any thing be more destructive to the constitution of Parliament, if such  
a case



a case as this should happen? And must the Commons in such case sit down under it?

Suppose any man should presume to arrest any member as he was going into the house of Commons, nay, the Speaker himself, and afterwards he is committed by order of the house, and the person committed should bring his action for taking him into custody, and the Sergeant who took him into custody should plead this matter, and the Judges give judgment for him as they did for the defendants in this case, and by writ of error, it being brought into the house of Peers, they should reverse this judgment, and give the plaintiff his damages; will any one say, we could not take notice of this? Would it not destroy all our rights and privileges?

So no doubt in this case, though they have gone by way of action at law, and judgment in *Westminster-hall*, and writ of error in the house of Peers, it cannot be said, but if it concerns our rights, we may take notice of it. In the case of Sir *John Elliot*, &c. the Commons declared the judgment, 5 *Car. I.* illegal, and against the privilege of Parliament.

It is my poor opinion it is our right (and I think no body can doubt it,) for we are in possession of it, to determine our own elections; and I would be glad to be acquainted when first we began to hear and determine our own elections; I believe no body will say with certainty when we did not.

I know we have a turbulent author, who generally affected to be in the wrong, and though a member of this house, made it his business to write against their privileges, and was always hunting among the records of the *Tower*, from whence he brought away a great deal of dirt with him, and yet could never pretend or produce more than two instances, where the Commons resorted to any other place for the settling the right of their elections: The man I mean, is Mr. *Prym*; he takes occasion

to do it from what is said by my Lord Chief Justice *Coke*, (who, with your favour, I must take notice so far, as to say he was not only a very great man in our profession, but had been Speaker of the house of Commons in his time) and he, in his 1 *Inst.* fol. 116. And 4 *Inst.* 1 cap. fol. 14, 15, and 23. asserts, That the law of Parliament is as much part of the law of the kingdom, as any other, and indeed the highest: He calls it *Lex & consuetudo parliamenti*; and says, this is a law that each house hath possession of, and judgeth by, and each house is a house of judicature; and he puts upon this a great many instances, and some of them may seem strange to those who have run upon the Commons of late. He tells you of a case 8 *Eliz.* (at that time *Onslow* was Speaker, and it is in fol. 19, of the book of the house of Commons of that year) one *Long* was returned a member for *Westbury*; and it being complained of that he came into the house by undue practices, it was enquired into by the house of Commons, and found that he had given four pounds to the Mayor of *Westbury*; and they having examined and tried this matter, did not only expel *Long*, but they fined and imprisoned the Mayor of *Westbury*, *Secundum Legem & consuetudinem parliamenti*. Mr. *Prynn*, the author I mentioned, supposeth there was a time when the Commons used to apply to the King, in case wrong was done in the matter of their elections; and in his comment on the 4 *Instit.* 31. goes back to the 12 *Ed.* II. there the King was pleased by commission to appoint several persons to hear the matter of an election. He pretends to another instance, and that is in *Henry* the VIth's time, in the case of *Huntington*; and there was a petition to, and a commission from the King in like manner. The latest of these instances is above two hundred years ago, and neither of them make any thing for a power in the Lords to determine the elections of the Commons; but on the contrary, rather for a power

power to be delegated by the King; and the instances are but two. Now, I say, Sir, we are, and have been in possession of this right for a very great length of time, and have it confirmed to us by act of Parliament; for the late act of 7 and 8 of King *William*, hath in effect declared, that the determination of the right of the electors is in the house of Commons; for it says, that the Sheriffs and Officers of all sorts, shall follow the last determination of the house of Commons, as their rule and guide in such cases. And surely nothing is more absurd, than to say, that this house shall examine, try, and determine who are elected; and yet *Westminster-hall*, and the Lords, shall examine and determine the right of the electors. How can any one examine the election, but the first step he takes must be to consider and determine who are the electors? And the determining the one, is determining the other.

I would trouble you a little with the reasons they give why this action should lie. It hath been said, and I think it is true for the honour of *England*, and I believe it hardly can be found to fail, that where a man hath a right, and a wrong done him, he is somewhere to have a remedy; but now let us see the application of this rule. Are they not by the same law that settles the right, and declares the wrong, to enquire where the remedy is to be had? For though you have a remedy, you mistake that which is the proper remedy; and the same law that settles the right, and declares the wrong, gives the remedy; you must therefore go to the place where the law directs, for your remedy, not where your self would desire the remedy. Therefore says my Lord *Coke*, in his preface to his 4 *Instit.* and likewise *fol.* 14, and 15. We have several jurisdictions, some ecclesiastical, some temporal, &c. some governed by one law, and some by another; and all must have their rules and bounds, which must be observed. If your right be ecclesiastical, as for instance, before the

the

the statute of tithes, could you in *Westminster-hall* have brought your action? Or if issue had been joined in such an action, and the parties had gone to trial, will any body say but that the Judges must have arrested judgment, and said that 'twas out of their jurisdiction? If a Lord of a mannor should refuse to admit a man, to whom a surrender is made of a copyhold estate, the Lord has done him wrong, and damage too; but yet he cannot bring his action at law for it, for it is an equitable right, and he must go to a court of equity for his remedy; and so I could put a thousand instances, but I will not spend your time. So that I say, it is not enough to say you have a right, and must have a remedy, and therefore you may bring your action at the common law; but you must seek it in a proper place, though perhaps costs and damages, and a trial by a jury, may be more desirable to the party.

Now, in this case I would know, whether this is not a matter of parliamentary jurisdiction, and also a parliamentary right? Is any thing more plain? He that hath a right to vote, hath a right to send a person to represent him, and sit in Parliament; therefore it is a parliamentary right; where then must be your remedy? In the house of Commons, where you have a right to send a person to sit and represent you; there you may complain, I was denied my vote, or misused upon the election. This, by the law of Parliament, shall be examined here, and for this purpose you constantly appoint a standing Committee of elections. Indeed I cannot but wonder at the bringing of this new invented action; for if there be any thing certain in the common law, it is this, that where you claim a right to any thing, it must be founded upon common usage in that case, or in some case that carries the same reason, and is just like it; for the common law, generally speaking, is nothing else but common usage.

Now



Now let us see for the usage in this case, and whether there has been any thing like this action before. Say they, how do you know but such actions have been brought before? I do not see that there can be a stronger negative proof in any other case than in this; for we have had Parliaments, as appears by our statutes in print, for five hundred years, and we have had Parliaments in every reign since, and in several reigns a great many Parliaments: And let us consider, whether this case would not have happened frequently in five hundred years, in so many elections in counties, boroughs, and cities where there are such infinite number of electors? And therefore this case must frequently have happened if such an action lay at law. If it be asked, how do I know that such an action hath not been brought before; I answer, it is wonderfully plain there never was such an action brought before; for as we have our acts of Parliament in print, so we have faithful Reports of all our law-cases, which we call the year-books, and which are memorials of all cases so long back as from *Ed. II's* time, that is 400 years, followed by a series of reports till this time, and are now grown so numerous, that they become a burden: And I will desire any Gentleman of the law here, or in *England*, to shew me the footsteps of any such action as this, or of this kind till now, ever brought before. We have always said, *our fore-fathers were wiser men, and greater lawyers than we are*; and so they were; but such an action as this never entered their thoughts.

But it may be said, how does it appear that there was occasion for these kind of actions formerly, for men heretofore were unwilling to serve in Parliament, they were hired, and almost pressed to it, and it was hard to get men to come up? I answer, It was so far otherwise for many years past, that so early as *Henry VI's* time, there were great contests about elections; and the Sheriffs in those days were

apt

apt to do wrong, as appears by 7 H. IV. *cap.* 15. And therefore 11 H. IV. *cap.* 1. there was imposed one hundred pounds penalty to the King, on the Sheriff that did not do his duty, according as the statute does direct: So that it does appear there was occasion for these actions, if they had lain by law; and yet you will find that never, till 23 H. VI. did it enter into the thoughts of any man, that an action at common law could be brought for an injury in an election; and therefore that act recites, that there was not before that time, a sufficient remedy for the party grieved, and therefore gives a hundred pounds to the party, and costs if a Knight, and forty pounds if a Citizen or Burgefs, and that by a law made on purpose to help the party to an action, where there was no such remedy before. Thus it rested till the famous case between *Nevill* and *Strode*, in 2 *Siderfin*, fol. 168. (in that time they sent five Knights of the shire out of *Berkshire*) Mr. *Nevill* brought his action against *Strode* the Sheriff; and he alledged that he being one of the five chosen for that county, *Strode* had maliciously and falsly refused to return him, &c. and the Jury gave him fifteen hundred pounds damages. This action made a great noise, and the Judges looked upon it as a great novelty, and thought fit to consult the Parliament in it; \* (they used to consult the Parliament in

\* Sir *Humphry Mackworth*, in his *vindication of the fundamental right of the Commons of England*, page 27. saith, in the case of *Strode* and *Nevill*, An. 1655, in an action on the case, against the Sheriff for a false return, to the damage of 2000 l. after a verdict for the Plaintiff and 1500 l. damages, the court of the King's Bench adjourned the case into Parliament, *propter difficultatem*, whether the action did lie or not? Where it is to be observed, that it was not adjourned into the house of Peers, but into the house of Commons, as the only proper Judges, in all cases of that nature concerning elections; So careful were they of the rights of the Commons.

in former days, in matters relating to the Parliament,) and the Judges heretofore, when they were asked their opinion in difficult matters relating to the Parliament, would say, this is above us, and therefore to be decided by Parliament. And this case being referred to the Parliament, they looked upon it as so extraordinary an attempt, that though Mr. *Nevill* had a verdict for fifteen hundred pounds damages, yet he never got a farthing of the Money, or any benefit by the verdict: *Sed ibi dormivit.*

After this, came the great cause, that hath been mentioned, of *Soame* and *Barnardiston*; and methinks this deserves very much our consideration, and how far the determination of the house of Peers ought to be a rule in this very case. That cause set forth with great prospect of success; Sir *Samuel Barnardiston*, in that case, did not slight the determination of the house of Commons, but first petitioned this house as the proper place to determine his right, and had it decided for him, that he was the person duly elected, and the other return was taken off the file; and then he brought his action at common law, and set forth this whole matter, and that the Sheriff falsely and maliciously returned another with him, whereby he was kept out of his right, &c. a long time, and put to very great expence and costs. This came to

And let not the iniquity of those times of rebellion be objected to this instance; the argument from thence extreamly confirms the right of the Commons; for if it be considered that *Cromwel* had then created a new house of Lords, and wanted nothing but a house of Commons to establish his usurpation, that to this purpose he had formed a new model of an house of Commons, and overturned the method of elections, depriving all the Boroughs of their rights, and causing the choice and returns of members to be made by the county; yet the name of a house of Commons remained; and even that was so revered in those days, that none would attempt to deprive them of their essential privilege, of judging of elections: No influence could bias the Judges; they thought it so inherent, that they would not presume to intermeddle in it.

be tried at the bar of the *King's Bench*, and there was a verdict given for Sir *Samuel Barnardiston* for eight hundred pounds. This was looked upon as a great case, and my Lord Chief Justice *Hale* bid all persons about him take notice, that they did not determine the right of the election, for the judgment in that case belonged to the Parliament; but said, since the house of Commons had determined the right, he thought they might follow their judgment to repair him in damages, and so gave judgment for the damages the jury had given the Plaintiff.

This case was looked upon as so improper for the common law, that upon a writ of error brought into the Exchequer-Chamber, that judgment was reversed, because the common law could not any way intermeddle with elections to Parliament, further than was directed by acts of Parliament. It might have been said, and I know it was said, that the reversal of this judgment, was by an extraordinary high hand: And therefore upon the revolution, in the very beginning of King *William's* reign, Sir *Samuel Barnardiston* brought a writ of error in Parliament, complaining that in the Exchequer-Chamber, they had reversed this judgment unjustly, and went upon these reasons, as may be observed from the journal of the house of Lords, which were the reasons of some very few protesting Lords.

*First*, Because it was a denying Sir *Samuel Barnardiston* the benefit of the law, which gives relief to all wrongs and injuries; and is a very great damage to the Plaintiff, and therefore he ought to be repaired.

*Secondly*, Say they, if it should be allowed that Sheriffs and bailiffs may make false returns, and no remedy but a hundred pounds forfeiture, it would be of dangerous consequence, and might tend to the packing of a house of Commons, which may overturn the whole constitution. But the Peers then did not think these reasons sufficient for this new action at common law, and accordingly the house of Peers



affirmed the judgment of reversal in the Exchequer-Chamber, and said, the judgment was well reversed, for that no such action did lie at the common law, though the injury done did tend to the Plaintiffs damage; and all other mischiefs which are now suggested, were insisted on; and thus it stands to this day. And yet now it is said upon the same reasons, the action does lie for this person, though he be only an elector, and must receive much less damage than the person elected; and there is no one reason for the elector, but holds more strongly for the elected. The elected can't maintain an action, and yet now it is clear that one of the electors may, though he can have no substantial damage; for if a man comes and gives his vote, (as here in this case) 'tis not in the power of the officer to hinder him of the benefit of it; for his vote will be as well given as if the officer had put it down, and this with respect both to the person who gave the vote, and him for whom he voted; and so really it is no substantial damage to any man.

The next thing I shall mention to you, is another case of Mr. *Onslow*: He brought his action against the Sheriff of *Surry* for making such a return upon him (I believe I have the gentleman in my eye who brought that action) he declared in the same manner that it was done falsely and maliciously, and had a trial and a verdict; and yet notwithstanding, the Court of *Common Pleas*, (being governed by Sir *Samuel Barnardiston's* case) did unanimously, 33 *Car.* II. say, we must not presume to determine the merits of elections, or returns, there is a proper jurisdiction for it, and they gave judgment against the action, and I think he hath acquiesced in it ever since. I am sure I have heard no more of it; the reasons given by the court, appear in the report of the case in 3 *Levinz*, fol. 29, and 30. and are worth the reading.

There

There was a case a year ago between *Prideaux* and *Morris*, in the county of *Cornwall*. Mr. *Stratford* was returned, and Mr. *Prideaux* brought an action in the *Common Pleas*, in the time of King *William*, against the Viander, for making a false return against him to his great damage, and laid it with all aggravation. This went to a trial in *Cornwall*, and there was a special verdict found; and the question was, whether this action would lie before the Commons had determined the right of election? And the whole court unanimously gave judgment, that the action could not be brought, till the matter had been first brought before the House of Commons, and they had determined the right.

Now here is a total silence in all books of the law, that any such action as this is doth lie: Here are the acts of *H. 6.* and King *William*, which provide remedies at law, because there was no other provision before. Here are not only these solemn judgments in *Westminster-Hall*, but the judgment of the house of Peers, in the case most like to this of any that can be thought of, that no such action doth lie: And yet I cannot tell how, there are abroad persons that endeavour to run upon the house of Commons, and use them ill on all occasions, and are zealous for this cause, which seems to be set on foot to undermine all our elections, and bring them to another judicature.

Now see the consequence: No man ought to have a foot against him, two judgments at once in two several courts; whereby one may punish him at the same time for doing a thing, and the other for not doing it. I believe such proceedings would be looked upon as barbarous even in *Turky*, and yet that will be just our case: A Gentleman petitions the house of Commons, and says, the right is in such a set, or sort of men; as for example, in all the Freemen, or free Burgeßes; and that according to that way of election, he was chosen, and not the

person that is returned ; and this is determined by the Committee of elections, and afterwards by this house against him that petitioned. This man goes immediately and brings an action in *Westminster-Hall* against the officer that returned the other ; nay, every one of these persons that he affirmed the right of election to be in, bring their actions, and it comes into *Westminster-Hall* to be tryed, and the Jury find the right to be in these men, as he has alledged, contrary to the determination of the house of Commons, and judgment is given against the officer in every one of these actions, for the men you have determined the right not to be in. You cannot set one of these judgments against the other ; I cannot defend myself in *Westminster Hall*, by saying, the house of Commons have determined that these men, who sue me, have no right to vote. There is nothing like this in the world, two independent courts cannot controul one another, but both may go on together in the same cause, and both having a right to judge, one judges one way and the other the other, and the officer is crucified between them.

Let it be considered again, that at this rate none but knaves, or beggars, will be Mayors, or bailiffs in an election-year : For suppose as at *Westminster*, where I think there are ten thousand electors : Or suppose it be as in some towns near *Wales*, for one of which I have the honour to serve, where the descendants of every burghers claim a right to vote, and by consequence they will bring it in time almost to all the sons of *Adam* ; for all the sons, and all the daughters husbands, and all their descendants claim a right to vote. Now what a miserable case must that officer be in, when persons shall come from east, west, north and south, and say their pedigree is so and so, (for they are good at pedigrees in those countries,) yet, what a condition is he in ? he is bound to determine whether they have a vote or

not

not; and tho' he is no lawyer, or herald, yet however he is bound to give judgment one way or another, at the peril of an action: And suppose but a hundred men should bring their actions against the officer, what man can stand a hundred actions, tho' he be in the right? There are not only these difficulties in the case, but there is revenge; and in popular elections there are those heats, and the voters engage with that animosity, that the losing side next day will be ready, perhaps only for revenge, to send for a multitude of writs, and have the pleasure of ruining the officer who was against them, tho' he was in the right; for every one has a right to bring his action whose vote was disallowed, tho' it should be found at last that he had no right.

As to the words *falso & malitiose* laid in this declaration, which seem to be a great ingredient in this action, I agree, in some cases where there is a jurisdiction, these words may make a great aggravation of the offence; but they cannot make a thing unlawful that is lawful, nor give a jurisdiction where there was none before: For no man will say, if a person should bring an action at common law for a legacy, and alledge, that the executor, tho' he had sufficient assets, yet he *falso & malitiose* refused to pay it; that would give a jurisdiction to the courts of common law. These words are *verba clericorum*, words of course for the most part. Besides, how dangerous and hazardous would it be for an officer, tho' ever so innocent, to depend upon these words; when every body knows that falsity and malice rest in the mind, they are in the imagination, and the Jury that are to try this action, are at liberty to judge with what mind the officer acted; that would be the hardest thing in the world for an officer to undergo in every action. It would be enough for the Jury to presume it was done maliciously, (seeing few Mayors, or Bailiffs, but have their inclinations, and give their votes themselves



for their friends,) because the officer made an interest for the other side; and the consequence of this new invented action, if countenanced, will be, that every triennial Parliament will bring a triennial harvest to *Westminster-Hall*. I speak against my own private interest, if that was to be considered. Elections, without actions, keep up animosities too long, so that they are hardly healed in three years time; but these actions will help to vex and worry corporations from three years to three years, and Mayors and Bailiffs will be the most miserable men in the kingdom, and ought to run their country rather than stand a popular election; whereas the officer is accountable to you for his behaviour at the election.

This is not a matter that stands in need of the aid and assistance of *Westminster-Hall*, that they should invent a new action and remedy, as if there was a failure of justice. Has any one come with a complaint against any officer to this house, and they have not been willing to hear it? Have not the Committee a right to hear and report matters with respect to the electors, as well as to the elected? And have not we known that the electors, tho' but a small number of them (as in a late case of this sorry town of *Ailesbury*) about five, I think, of the electors came and complained, and their complaints were fully heard. And if any single elector should come with a petition, and represent that he was abused by an officer, or ill treated by any Mayor, or Bailiff at the election, I do not think but the house would be ready to do him justice: And they have a right so to do, for the officer is accountable to them for his behaviour. 'Tis not now only so practised, but always was so; for in the same treatise of my Lord Coke's *4th Inst. fol. 49.* he says, that they will make him change his very return; they will make him raze out the name of one, and put in the name of the other. So that they have a jurisdiction

jurisdiction adequate in this case; and surely if they can hear the complaint of several electors, they can hear the complaint of any one elector. I would not trouble you with arguments that may be proper in *Westminster-Hall*, because we are here upon matter of our constitution; but I know no action more obnoxious to the true reason of the common law, which abhors multiplicity of actions; and a man shall never have a particular action, for that which naturally draws on multiplicity of actions, and may be reformed in a more compendious manner. Upon this reason that famous case in 5 *Rep.* called *Bolton's Case*, is founded: If a man builds a dove-house near a common field, where men make all their profit by plowing and tillage, and therein keeps a great number of pigeons that live upon his neighbour's corn, is not this a great wrong and injury to them? And yet no action lies; for if one man that is wronged thus may bring his action, a great many more may do the like, and so there will be infinite actions; therefore it shall be presented in the Court-Leet, as that book says. So there is that case of *Williams* in the same book, where the Lord of a manor had a chapel for himself and his tenants to repair to, and to hear divine service, within the parish of *Aldbury*: He brought his action against the Vicar, who was obliged to officiate, for that he had neglected, &c. tho' he had used time out of mind to officiate, and had an allowance for it: Says the case, if this action should be allowed, all the tenants and servants of the Lord might have the like action, and so there would be a multiplicity of actions, and therefore he shall not have this action; but if it had been to have been performed in his own private house or chapel, he alone might have had an action. But since it would draw on a great many actions, which may ruin any man, therefore the remedy must be taken in such manner as it is given where there is publick offence,

fence. In the case before us, every person is chosen *pro bono publico*; for tho' he be chosen for a particular place, he serves for the whole kingdom; and for that reason you shall not proceed by way of action, but in such manner as it hath been always used, where the whole thing shall be examined at once, and all determined upon one petition, wherein all the parties injured may join instead of a multitude of actions.

I shall not propose to you any thing, but hope you will at least come to some determination that may assert our right in this point; that this door may not be open to bring a new jurisdiction, to examine and determine whether any of us sit here rightfully or not.

'Tis a standing order of the house, that no Peer hath a vote in the election of a commoner; but in the next elections, if this be allowed, every Peer may vote, for they are freeholders, and many of them Burgesses and members of corporations, and they may all come and demand their votes, and if refused, bring their actions. These and many more inconveniencies are obvious, if this action should be allowed, and I believe it may have a great effect upon our constitution. Very much more might yet be said, but I have taken up too much time already.

Sir John  
Harries,  
(Solicitor-  
General.  
Temp. Will.  
III)

Mr. *Freeman*, we are jealous of our privileges, and I think we have just reason so to be; but we must take care that that does not carry us too far out of the way: I would not have it taken for granted, that whatsoever is said against the Lords here, tends to assert the privileges of this house, or that what is said for the Lords here, is against this house. I am as much for the privileges of the Commons of *England* as any man, and I own they have lost a great deal of power: I think the Commons had a great power, when the greatest part of the judicature of this

this government was their sole right; Nay, if a Peer had had a matter of contest with another Peer, or with a commoner, and issue was joined, that issue was to be tried by commoners, and not by Peers. 'Tis true, if the prosecution of a Peer was in a capital matter at the King's suit, it was to be tried part by commoners and part by Peers; the bill of indictment was to be found by commoners, but the issue was to be tried by Peers: But if a Peer was prosecuted in a capital matter by a commoner, or Peer, as by an appeal, the issue was to be tried by commoners. I must confess, as to the Lords jurisdiction in matters of equity, the Commons have great reason to be jealous, because there all facts, as well as law and equity, come to be tried and judged by the Lords alone.

Sir, I say, when all facts were tried, and most of the Officers of government were chosen by the freeholders of the county, the commons were somewhat greater than now they are; when they had the election of the Sheriffs of the counties; when they had the election of what they called conservators of the peace, officers that were the same with our now justices of the peace, with this difference only, those the Commons made, these the crown makes. The Commons had a great power when they were to elect their Captains that led them out to war, which heretofore they did, and had a right to do, 'till it was taken away from them by the act that settles the militia, though I own it was refused many years before. The making of Sheriffs is now placed in the crown; we have nothing left now, but matters of trials in particular cases, and even that is so far cramped, that the Jury is returned by an officer that the crown puts upon the county.

But yet I am not for carrying things further than we have a right to do; I am for keeping what we have, and for that reason I am not for encroaching upon the allowed jurisdiction of the house of Lords;

we



we have always allowed them a right to hold plea of writs of error. The Parliament in *Hen. IVth's* time, did declare the right of Judicature to be in the house of Peers; and I never found any inconvenience in it, if the Peers kept only to matters of law, and left the facts to be tried by the Commons; nor did I ever know that right of the Lords questioned till now. A great deal hath been said for, and against the right of bringing this action; I do not think that that is now the question, the question is, whether a judgment being given in the *King's-Bench*, a writ of error does not lie in the house of Lords? But whether the Lords did right, in giving that judgment they have now given in the case before you, that is another thing. I speak to the right of holding plea of this particular writ of error; no body hath denied but that they have a right to hold plea of a writ of error in general, upon a judgment given in *Westminster-hall*; but, say they, the Lords ought not to have done it in this particular case; and several reasons have been given for it.

*First*, Here is the privilege of the house of Commons in question in the case: That hath been argued and insisted on, but I confess, that argument does not influence me. The Lords have held plea of a writ of error, in which the privilege of the Commons hath been in question; and the Lords have done right to the Commons in it, particularly in that matter of the Parliament of 1640, when some were supposed to have done irregular things in the house of Commons, and were prosecuted for it by information in the *King's Bench*, and were fin'd in *K. Charles I's* time; whereupon a writ of error was brought in the house of Lords, and that judgment reversed in the time of King *Charles II.* There the Lords did right to the Commons in the matter of privileges of the Commons, for it was for laying hands upon the Speaker in this house; and I think every body com-

mended

mended what was done in that matter by the house of Lords, and no body ever said but that they had a right so to do. Some things are not to be come at otherwise, than by a writ of error in the house of Lords; and I believe if you look a little back, there have been judgments given in *Westminster-hall*, not only in matters of, but against the privilege of the Commons; and these judgments stand unreversed, though I think they are fit to be reversed, and I know no other method to do it but by writ of error in the house of Lords. I think there is one judgment upon an information against the Speaker, for licensing papers to be printed, which he did by order of the house.

There is another instance of a person taken into custody by order of this house; it was the case of Mr. *Topham* Serjeant of this house: The party brought his action; the Serjeant pleaded his warrant, that it was done by order of the house of Commons, and judgment was given against him, and this judgment stands unreversed.

Now what method have you to reverse these judgments, but by writ of error? If you think to do it by a bill in this house, that must likewise pass the house of Lords, and so will be the same thing as a writ of error.

Another thing is said, that this person was not damnify'd; or if he was, there are such a number of persons who were then likewise damnify'd, that may bring their actions, that no body will execute such an office. I think that argument ought not to prevail, for at that rate you will allow the Officer not only to be a judge, but the supreme judge, and the parties damnify'd shall be without relief; he may do what he pleases, and he shall never be questioned afterwards, save in this house, which I will consider by and by. 'Tis agreed, you may punish an officer that misbehaves himself in matters of elections; and that is practised now very much; but at the same time

time you punish the officer, the person damnify'd hath no satisfaction, though our law allows satisfaction, in cases where he that did the wrong shall not be punished, and allows satisfaction in all cases where a person is punishable, if another hath received a particular damage.

A man is liable to be fined to the King, or Queen, that is a punishment; but if he pays so much to the party damnify'd, that is satisfaction. If a man's horse breaks into another's ground, he shall not be punish'd, but the person damnify'd shall have satisfaction: But in this case you allow the officer shall be punished, but you will not allow the man injured any satisfaction for the damage he received; which cannot be supported, by reason or by the authority of any particular case.

In all cases I take it to be true, where a man is punished for doing another damage, the person damnify'd shall have satisfaction. But that rule does not hold true in the contrary.

It is said there are a great many persons concerned, and if you give every one an action, there will be no end of these actions, and therefore none shall have an action. This is a strange argument: If a man injures one, or two persons, each shall have an action for their respective damages, but if he injures an hundred, none of them shall have an action; as if when a man is moderately injurious he shall make satisfaction; but if he is extravagantly injurious he shall be scot-free, and make satisfaction to none. This rests to be made good either by reason or authority, which hitherto hath not been done. The case cited, I own, is true; but you must take it with this difference, if any thing is done which might have been of damage to a hundred people, but was of damage to none, none shall bring their action, though the criminal shall be punished; but where there is particular damage done to any person,

an action will lie for the damnification of that person. If a man digs a pit, any man may fall into it, and no person shall bring an action for that; but if any person doth fall into it, and hath particular damage by it, he shall bring an action and have satisfaction. And with submission, that argument will not hold, that because a person might be ruined, if he be obliged to make satisfaction for the wrong he hath done, therefore he shall not make satisfaction to any particular person he hath damnify'd.

It hath been said, admitting it to be so, that the party ought to have satisfaction, yet he ought to take his remedy in a proper court; as if a legacy was given, an action would not lie in the *Queen's-Bench* for it; which is true. But it would have been well if that gentleman had told us which was the proper court to give satisfaction, for the wrong supposed to be done in this case; if the *Queen's-Bench* be not the proper court, what court is? 'Tis said the house of Commons is a court, I was always of opinion it was so: 'Tis a court of Judicature, my Lord *Coke* says, and a court of record. I wonder, when all this is allowed, it should be said this court hath not a power to administer an oath to a witness; I think that was never deny'd to any other court whatsoever. Every court of record has power to administer an oath; but tho' this be a court of record, this cannot, it hath not that power. It would have been very well if those who are against this action, could shew us that this is a court that can give satisfaction; some courts can punish, but can't give satisfaction, whereof I think this one; satisfaction was never given here that I know of; was it ever? Or pretended to be had here? In the first instance 'tis true, this house hath punished, and by such punishment compelled the delinquent to make satisfaction to a person by increasing, or remitting such punishment; but that is not the case before us.



It hath been said there has been no instance of this kind of action brought; and that the court of *Queen's-Bench* have declared they have nothing to do with the business of elections, for that the right of elections ought to be determined here, and for that purpose the declaration of the Lord Chief Justice *Hale*, in the case of *Barnardiston* and *Soame*, has been cited. I must confess I can't but wonder at that case; we did lately think that the judgment given in the *King's-Bench* in that case, was rightly given; and afterwards, when it was reversed, people were astonished at the reason of it; and more when that judgment of reversal came to be affirmed in the house of Lords. No body hath ever said why that judgment was reversed; I do not see but on the same reason several judgments within these few years, nay, even in this reign, may be reversed likewise; for the court of *King's Bench* in that case, did not pretend to a judicature of determining the right of elections; the matter in that case had been determin'd before in this house; but they only gave damages for the wrong sustained, that was all the court did in that case, and yet that judgment was reversed. I believe there hath been some judgment given by this house, within these twelve months, that where the house hath determined the right of election, the party grieved shall be allowed to maintain an action at law for his damnification.

But I take it that there is a difference between the case of *Barnardiston* and *Soame*, and this present case. Time was when it was doubted, where a man was elected, and the officer refused to return him, whether the person elected was damnified or not. 'Tis very certain; heretofore persons were not so ambitious of sitting in this house as now they are; and some persons purchased charters of exemption, to be excused sitting in this house: And so it had been practised in the house of Lords. The act that hath been mentioned before, expressly commands, that the  
 person

person chosen shall come and be present in Parliament. And afterwards there was a penalty put upon such as were chosen, if they did not appear here; to which another punishment was added, which was, that the person elected, if he did not come hither, should lose his wages. It was not reckoned a damage that any person was not returned a Burgess to sit here, but a kindness; but that did not hold so in the case of an elector. Every body agrees, as the electors had a right to choose, so there was no statute to compel them so to do; but they looked upon it not only as their right but their interest, to be present at the elections. And none can say but 'tis a man's interest, to make choice of such a person to serve in Parliament, (who hath the power over his estate, and life too for ought I know,) as he could trust. No body ever doubted that a person who had a right to vote, had an interest, and might be damnified if his vote was refused. So that none of the cases that have been put of the right of the person elected to serve in Parliament, as Knight of the shire, or as Burgess, come up to the case in question.

I would say one thing as to the damnification of the persons elected; there is a late act that gives double damages where the return is contrary to the last determination. Now, I do take it, that act supposes that a man might have been damnified before; and if he was damnified before, he was so by the common law, for no statute gives him any damages: 'Tis true, that statute gives double damages, but still that statute supposes there was a damage before, and builds upon that foundation; so that with submission, that very statute runs against all the cases that have been put as to the persons elected.

'Tis said, at this rate, the Lords may come to vote in elections. I am of opinion the Lords have no right to vote in elections for a Knight of a shire or a Burgess; and the reason I go upon is this, every person who had a right to vote, ought to have con-

tributed to the Expences of him that was elected; if he was a freeholder, he was an Elector for the county, if a Burgeſs, for the borough; and the expences of the Knight of the ſhire were to be levied of all the freeholders, and the expences of the Burgeſſes upon all that were reſident in the borough. But the Lords were excuſed from that charge, they were not to be contributors to the expences of a Knight of the ſhire, or Burgeſs, becauſe they were of another houſe. There was a law made which ſays, that for lands purchaſed by any Lords, ſuch lands ſhould continue chargeable to the expences of Knights of the ſhire, as they were before ſuch purchaſe; ſo that 'tis plain before that act, the lands the Lords were ſeized of, or purchaſed, were excuſed from that charge.

But, Sir, I think this matter is not to the caſe in queſtion. This is nothing but a collateral action for damnification, whereof the conſequence is not much, not above five pounds; tho' I acknowledge the ſmallneſs of the ſum does not influence this caſe. Nor is the queſtion, whether the Lords have done right or not, in reverſing the judgment given in the *Queen's-bench*. *Humanum eſt errare*. If they have a juriſdiction, we can't juſtly complain; tho' I am of opinion they have done right; I think the plaintiff in this caſe was damnified, and I think the court of *Queen's-bench* ought to have given judgment againſt thoſe who did him the injury, for the damage he ſuſtained; and I think the Lords have done right in reverſing that judgment, and in giving ſuch judgment as the court of *Queen's-bench* ought to have given.

Sir Edward  
Seymour.

SIR, 'Tis enough for me that we have the law on our ſide, and we are very much obliged to the pains and underſtanding of thoſe learned gentlemen that opened this debate, in preſenting us with a true ſtate of our diſeaſe; it only remains now for your prudence, to apply a remedy.  
And

And I cannot but take notice, that this is an action without any precedent to warrant this proceeding; and I believe it might have remained so still, (for I don't think there was virtue enough in the cobbler of *Ailesbury*, nor had he purse enough) if a Lord had not acted that part.

For my part, Sir, I do not think this to be the single instance of the house of Lords, we have reason to complain of: I think in a great measure, by their proceedings, they seem to hold forth, *That the axe is laid to the root*, and that they have a dislike of this house of Commons, and endeavour to get rid of them. I shall not instance in particulars, but I hope there is one you will not let go, without applying some remedy to, and that is, that noble representation in which they have villified you to the highest degree, and lay all the mischiefs of the last reign, and this, at your door. I could shew you, there is nothing in it but stuff, *populum fallere*; and we see the consequence of it, and what pains and endeavours they have taken to disperse it all over the world, to make impressions upon the people. But that which I would have some resort to, is this, that these worthy persons that have spoke before, tho' they have truly represented the state of our condition, yet, they have been very tender of applying a remedy.

It does, I think, consist of two parts; one is what relates to the inferior courts, the other to the judgment of the house of Lords upon this writ of error. Now there is a right to bring a writ of error, the learned admit; but I would take away the foundation, and make this declaration:

That no inferior court below should presume to intermeddle with the elections of the house of Commons; and I am sure then there will be no foundation for a writ of error. In the next step, with relation to the judgment given in the house of Lords;



'tis true, the Lords make a great complaint, that in matters of Parliament we have address'd, without advising and consulting with them; I will not say how far 'tis justified by their proceedings: I need not remind you of the address they made without you, when you address'd against my Lord of *Worcester*; before you had presented your address, they presented a counter-address to yours. But I take the distinction to be here, 'tis one thing in matters of state, and another thing when the matter depends between the two houses: Where 'tis a matter of state, with relation to the Queen's prerogative being violated and invaded, as you are her great council, you are to advise the Queen in that matter, and not let any thing of that kind pass upon her.

But howsoever I would go the regular way, by condemning this judgment, in relation to the house of Lords; and after you have made that condemnation, I would apply to the house of Lords, to see if they would recede from this judgment of theirs. But I am afraid arguments, or debates, will help your case but little, you must have recourse to remedies that are in your own power. We see what they did upon the last occasion, when they thought their privileges were concerned; they adjourned, and all to prepare the way to make the world believe they were injured, and prepare them for their proceedings afterwards.

And I say, this is not a thing that falls out by chance, but carried on by all their power, to represent you as inconsiderable, and to make you useful for nothing but giving money, and then to send you home into the country. But if you do not keep the power in your own hands, you will be without remedy. I conclude with what I mentioned in relation to the courts below, to declare that they have no power to intermeddle in matters of our elections.

I SHALL

I SHALL not pretend to follow that honourable gentleman near the bar, in all the steps he hath made, tho' I think I may be as regular as he. I think he hath only shewed, that there is not so much reason in this case to find fault with the Lords, but that it is necessary to find fault with them one way or other.

Marquiss of  
Huntington,  
afterwards  
Duke of Devonshire.

I think this is a matter of great consequence, and as long as I sit here, and as long as I live, I shall be as tender of the privileges of this house as any body. I think 'tis upon the due balance of both houses, that the safety of the whole does consist; and I must confess, I think the liberty of a cobbler ought to be as much regarded as of any body else; that is the happiness of our constitution.

I think it was very well observed by an experienced member, that this writ came very regularly before the Lords: If so, then I think the question is between us, and the persons that elected us; and I think, tho' gentlemen would not formerly allow of any distinction between the privileges of the house, and those of the people of *England*, yet they must allow it now, or they can't complain that this action is any prejudice to this house. For when a person offers his vote at an election, and is not admitted to give it, and upon such refusal brings his action in the courts in *Westminster-hall*, (which I take to be the present case,) if giving judgment upon it be contrary to the privileges of this house, then 'tis pretty plain, that our privileges do interfere with the rights of the people that elected us.

I shall plainly give you my opinion in this case: I can't think this action to be a breach of the privilege of this house; for, Sir, the party grieved, can be no way relieved, but by applying to the law, and I think the learned gentleman below, is out in all his instances; for he hath given an account of people injured applying to you, but they

they were candidates, and certainly that was their proper remedy; but in the case of an elector, I don't see he can have satisfaction by applying to you.

Gentlemen talk of the law of Parliament; I can't see how that can give any interruption to the law of the land, that it shall not do right to the party grieved: How shall a man injured in the manner I have mentioned, receive satisfaction, by applying to the Parliament? 'tis true, the officer offending may be punished, but the party injured can't receive that satisfaction he would in the courts below, by giving him his damages.

I think this is a matter of great consideration, and it is necessary to consider well of it, and not to determine rashly. I think it may be of use to us, since there are judges who have been of opinion, that the subject ought not to have his remedy in this case. A judge that will out of fear, or any regard to one house, do contrary to his oath, I believe at another time will be influenced by the other. I think 'tis the duty of a judge to act according to law, and not be afraid of either.

Mr.  
Lowndes.

SIR, THERE is no doubt but all the judges, (as hath been said,) and every body else, are obliged to behave themselves according to the laws of the land: But the question is, what is the law of *England* in this case; if the house of Commons has an original right, to determine all matters concerning elections of their own members (as it hath been always understood to have) and if we have a power to punish officers for making false returns, or any other misfeazances committed by the returning officers; then it will not be necessary, that the Judges in *Westminster-Hall* should have any jurisdiction at all, in the matter now in question; and if they have none, then by consequence the Lords will have as little by writ of error.

I do

I do confess, Sir, when I first heard of this case, it gave me some apprehension that it might be of fatal consequence (by reason of the novelty of it,) to your privileges, which are indeed the privileges of the commonalty of *England*, which we represent. But since I have thought of it from time to time, and it hath been better opened by the learned Gentlemen that have spoke in this debate, I conceive our coming to some resolutions declaratory of our right in this affair, may preserve the liberties of this house, and of all the Commons of *England*, who have intrusted us with the preservation of their rights.

I think the learned Gentleman over-the-way, took his ground too narrow; I might yield him this point, that where there is a writ of error brought from a judgment in *Westminster-Hall*, in cases where a writ of error lies, and where that court, and the house of Lords have a jurisdiction, there the house of Lords are at liberty to give what judgment they please. But I have read, the house of Lords is not an unlimited jurisdiction, but is bounded as well as the courts of *Westminster-Hall*, by the law of *England*. I speak it with the greatest reverence, that the regal power, (which is the most supreme in *England*,) is obliged to the observance of the laws; and it would be absurd at the same time, to say, that any part of the parliamentary constitution is not limited by the known laws of the land, or the laws and customs of Parliament; and I doubt not but it will appear, a writ of error doth not lie, and never did lie before the Lords in such a case: And so it comes at last to this point, what is the law of *England* in this case? And I will tell you my thoughts of it.

I have read, and learned, and I believe it is true, that matters of Parliament are determined by the laws and customs of Parliament; and I believe there is as good authority for it, as there is for writs of error, or any thing else; and that this law and custom of Parliament is a principal part of the laws



of *England*, and to be learned by experience and precedents, and I reckon that we must come to them at last. Now, Sir, let us see what experience or precedents we have to found this jurisdiction of the house of Commons upon, for examining and determining matters concerning their own elections. 'Tis true, we have no journals extant before *Ed. VI's* time: And there is a book they call *Seymour*, I think it is a book of no great authority; and if it be, there is but a small matter in it. I have read it over carefully my self more than once, and find only titles of bills depending, and when they were read; and all I learned from it, was, that sometimes bills in those days were read four times. And, Sir, there is as little concerning elections in *Queen Mary's* reign; but in the beginning of *Queen Elizabeth*, you have the matters of elections plainly set down, and so they have been ever since. And from that time to this it hath been a standing rule in the house of Commons, in the beginning of every Parliament, and (as I take it) of every session, to appoint a Committee to examine all matters concerning elections. Now if the right of elections is not a matter concerning the election, then I own my self under a mistake: But if that be a material part, and comprehended within the general words; and if those Committees have from time to time proceeded to examine the right of electors, and this house hath proceeded from time to time, to give judgment in such cases, sometimes according to general qualifications settled and adjusted in the house, and very frequently upon examining and considering the rights of particular votes, then I think we have as good authority for the jurisdiction of this house, in the matter of these elections, as can be had for any thing whatsoever.

I do say in this case, we ought to take our ground and foundation upon the right which the Commons of *England* have, and ever had by law and customs

of

of Parliament, to be exercised by the representatives of their own chusing; which right is grounded upon manifold precedents and constant usage. For if we have a power to hear and determine the right of the electors; and to punish Officers for abridging them of their right, and give satisfaction to the party, which most evidently appears, not only in our journals, but by a continued and uninterrupted practice, time out of mind; then I think we need look no further.

I do say, that from time to time there has been never a session of Parliament, but this power has been exercised; and in your Committees they have often come to resolutions to determine the right of all electors, and frequently of particular electors; and for that purpose only they have examined, whether persons had burgage, tenures, or have paid scot and lot, or have been freemen, and other circumstances necessary for the information of the Committees; and as matters have appeared, they have judged them qualified or unqualified: And where the votes of persons having right have been offer'd, tho' refused at the election, the Committees have usually allowed those votes as if they had been given, and upon their determination the house have agreed with the Committee very frequently, and sometimes have disagreed with the Committee, as the merits of the cause have appeared to the house. So that nothing is plainer, than that the house of Commons have, from time to time, exercised this jurisdiction in all the parts of it; and sometimes elections have been tried at the bar, and determined by the house upon such trial.

Then how comes this action to be brought in *Westminster-hall*? I have consider'd that point, and take nothing to be plainer than this, that *Westminster-hall* never had a power to meddle with elections, but where by some special act of Parliament you have given them power. I know that there are  
some

some opinions, that elections have been tried in Chancery, and in the house of Lords: But I cannot find any thing of that nature ever settled, though some attempts have formerly been made that way. I know that witnesses have been carried up sometimes to the house of Lords bar to be sworn, but the trial of elections, and of the right of the electors, hath always been in the house of Commons; so that here would be no defect of power, or justice, if no body else meddled in this matter.

Then consider what acts have altered this original right: I think there are two that are most material to be considered; one is that of 23 of *H. VI. cap. 15*. What is the importance of that? It takes notice, that convenient remedy for the party grieved was not ordained in the former statutes against Sheriffs, Mayors, and Bailiffs offending; whereby one would infer, that the Parliament in those days did not think or know any thing of the remedy, now endeavoured to be set up in *Westminster-hall*, and the house of Lords. And this statute provides, that if any Sheriff do contrary to the statutes about elections, he shall incur the penalty of the former statutes, *viz.* one hundred pounds to the King, and a year's imprisonment, and shall forfeit a hundred pounds more: To whom? To the party that ought to have been returned, and if he do not sue, there is an action given for the same to any body else: And a Mayor, or Bailiff, for a false, or undue return, is to forfeit to the King forty pounds, and forty pounds to the party that should be returned; and if he do not sue, then a popular action is given for the last penalty: So it is plain by this statute, no action is given to the voter, who had his remedy in the house of Commons. Your ancestors were so careful of your liberties, that they never trusted their elections to all persons; such as held in villenage, all customary tenants who held at the will of their Lords, and might be influenced by them, and, (as I take it,) tenants by escuage;

till

'till escuage was reduced to certainty, were excluded; and afterwards all freeholders under forty shillings a year: And when the officers were by law to admit some votes, and reject others, they were to use the best of their judgments, without being liable to a multiplicity of actions, (unless in the cases I have mentioned,) but for their defaults were always responsible to the house of Commons.

Let us consider then the statute in King *William's* time, I think it is in the seventh year of his reign; there the statute takes notice of the injury done to gentlemen by double and false returns, and thereby a double return is made a false return; and by the statute 'tis provided, that if any returning officer return contrary to the last determination of the house of Commons, of the right of election: Such return is thereby adjudged to be a false return, and void.

This statute of the seventh of King *William*, admits the very determination of the right of election to be in the house of Commons; it does not say the determination of the election but of the right of election. I will endeavour to avoid repetition.

But how does this matter stand by the law and custom of Parliament, which is a most material part of the law of *England*? The house of Commons have the jurisdiction in these matters of their elections; but by one or two statutes, the house of Commons have given power, in one or two cases, to proceed in the manner therein prescribed; but none of the cases allowed by those statutes, are like the case of this man at *Ailesbury*, for he is not a person who has suffered because he was not duly returned, nor the person mentioned in 7 *Willielmi*; nor is his action founded upon any statute; so that this case is left out of the statutes, and it must be determined according to the law and custom of Parliament.

As to the case of Mr. *Nevil*, it never came to be determined in Parliament: We read it was put off to the Parliament, because of the great weight of it; and



and the judges were of opinion that it was a matter too high for them. And in the case of Mr. *Onslow*, where the case of Mr. *Nevil* was cited, they positively said, it was a matter of too great presumption for the Judges to meddle with it.

Then how comes it to pass, if this action might have been brought at common law; I say, how comes it to pass, that this action was never brought before? Certainly that is an argument it never lay, for there must have been occasion for such an action, if the common law would have maintained it. But the Judges who knew best the grounds and reasons for this pretended action, have refused meddling in this matter, because it concerned the Parliament, and the Parliament had not intrusted them with it. As to the case of *Barnardiston* and *Soame*, first adjudged in the *King's-Bench*, the reason was, because it had been adjudged in Parliament; for Sir *Samuel Barnardiston*, had a majority by near a hundred, and the house of Commons had tried the cause, and gave him his right of sitting in the house; so that one would have thought that he had liberty to have gone into *Westminster-hall*. But afterwards, this judgment was reversed in the *Exchequer*; and Judge *Ellis* in his argument says plainly, that the right of determining elections belongs to the house of Commons, and the house of Commons have determined it for Sir *Samuel Barnardiston*, and for that reason you ought to affirm this judgment.

This matter was brought presently after the revolution into the house of Lords; and when it came there, all but five or six Lords were for affirming the reversal. Now, Sir, by reading the reasons of these five or six Lords that dissented, we may easily infer what were the reasons that induced the whole house to affirm the reversal. Two reasons were given: First, said they, because otherwise there will be a defect of justice. One may infer, if these five or six Lords were of opinion, that there would be

a de-

a defect of justice, all the other Lords were of opinion, there would be no defect of justice. The five or six Lords that dissented, said, that the Plaintiff ought to have this action by the common law; certainly if the other Lords had been of this opinion, they would have maintained the action; but they concluded no such action did lie, because no such action was given by the common law.

I take this matter to be of infinite moment, and I think there is no degree, or state in this realm, but what is bound by the known laws of the land; and if the Lords in Parliament, and the Judges are limited by the laws of the land, so that they have no jurisdiction in this case, then I do not see how a writ of error can give them jurisdiction. Sir, I appeal to you, and all the gentlemen here, whether what hath been said on one side hath been at all answered by the other: If an action of *scandalum magnatum* should be brought against a member, for what he has said in this house, no doubt but that member would plead the privilege of this house, and 'tis to be hoped the Judges would allow it, and put the Plaintiff off *sine die*. But notwithstanding, a writ of error, according to this doctrine might be brought, and the Lords might give judgment that this action does lie, and then what would become of your liberty of debate? This is an instance worth your regard.

It hath been told you, how the Lords have taken notice of the privileges of this house, in the case of *Hollis* and *Elliot*. Let that be set in it's true colours, and see whether any thing can be drawn from that case to fortify the judgment lately given in the house of Lords. There was a disorder in the house of Commons, and the Speaker was violently forced back in to the chair, and scandalous words against the King's-Privy-Council and Judges, were uttered by *Elliot*, *Hollis*, and others, and upon that a prosecution was brought, 5 *Car. primi*, against those particular gentlemen in *Westminster-hall*; as well for the words spoke in the house of Commons,

mons as for the force ; and fines were set upon them. This matter, after the restoration of *Charles II.* was brought before the Lords at a conference, and they took notice of the privileges of this house, not to set them aside, but confirm them ; and their Lordships declared the judgment to be illegal, and against the freedom and privilege of Parliament, and desired the Lord *Hollis* to bring the roll before them by writ of error ; and so by agreement the judgment was reversed, as being against the freedom of speech in Parliament, allowed by *Strowd's* act ; which their Lordships acknowledged to be declaratory of the ancient and necessary rights and privileges of Parliament. Their Lordships then would not let any matter appear upon record, to the destroying the Commons privileges ; and I wonder how this precedent comes to be cited, to justify a proceeding which tends directly to take away your privileges.

I wish with all my heart, the house would have appointed some persons to have searched precedents, and I am sure they would have found an infinite number to be produced, to have justified the power of the house in this case, how it hath been in their power, time out of mind, how they have a power to punish officers, and in some instances, they have given damages.

I remember one in my time ; Mr. *Tankred* caused a person to be brought hither, and he cleared himself ; and the house, (as I remember,) made an order, that as he was the occasion of the man's coming up, and had done him an injury, he should make him reparation, and he was forced to do it by paying him a sum of money.

Not that I would go so far as to say, that this house is a proper court for imposing fines : But if they are not a proper jurisdiction for the business of their own elections, I think they have no jurisdiction at all. I will not say this house has a power to fine : I know we read something of that in your journals,

nals, but I think those fines came to nothing, because there was no means to estreat them, or cause them to be levied; and so that matter has slept ever since, and I hope, will for ever.

But not only your freedom of debate, but right of sitting in this house, is concerned in this case: And if you have not a power to determine matters of elections to this house, I wonder how any author comes to say this house has any judicature at all; for if they have not a jurisdiction to this, they have no jurisdiction to any purpose whatsoever.

If this point be settled, that this power belongs to the house of Commons, the next consideration will be, how to attain it; and in this, I hope gentlemen will take such steps as are proper for them, and for those they represent; for we are sent here *ad tractandum*, &c. in the name of those we represent: And we have but a delegated power, and can't, without breach of trust, give up the rights of the commonality. For my own part I have taken an oath to preserve the privileges of the people that chose me, but without such an oath, should be of opinion, that I cannot give up this privilege which I am to execute on their behalfs; but I will use all the lawful and just methods I can to come at it, and I think you may do this, without interfering with the house of Lords, or the Judges. There is no doubt, but the Judges in *Westminster-Hall* are bound to take notice judicially of your legal proceedings here; and if you come to make a declaration, "That the power of hearing and determining all matters concerning elections, does belong to the house of Commons in Parliament." I doubt not, but they will take notice of it as becomes them. And give me leave to say, no body can help bringing this action as this was done; for a person may take out a writ, and declare upon it, and carry it down to trial, without the privity, or knowledge of any court; and then when the cause is tried, the other side comes  
and



and moves in arrest of judgment, and the court gives sentence. But I wish the defendant had demurred, and then that would have put it as a point of law to the judges; and if they had determined it judicially for you, I believe it would have gone no further. For it is one thing to determine it upon demurrer, and another thing, when the cause has been tried, and damages given, to have the court's opinion *ex post facto*.

The Judges determined the action does not lie; but as matters stand now, perhaps, in like cases, there will be brought a writ of error before the Lords, and they will give such a judgment as they have given now, for ought I know. I should not think it proper to come to any question now, by which you shall determine your right, if you are not fully satisfied about it; but it ought to be considered farther. The law and custom of Parliament is to be found out by experience and precedents: But if you are satisfied, then I think the proper question is, that by the law and custom of Parliament, the hearing, examining, and determining all matters, concerning election of members to serve in the house of Commons, is to be by the same house. I think that is to be your question, or to that effect.

The consequence will be, if this be part of the law of *England*, as it plainly is, you may as well stand upon that declaration, as upon any new law to be made by Parliament, if you could get it. But I believe you have no great reason to expect a new law in this case to pass in the house of Lords. Then what would you do? If you should try to get a new law, and fail, it will be construed, that you had not this power before, but endeavoured to get it, and the house of Lords denied it you.

But 'tis plain and clear you have this power already, and a sufficient ground to stand upon; and I doubt not, but *Westminster-Hall* will take notice of it,

it, and the house of Lords too: If they do not, (*Here Mr. Lowndes was interrupted by a noise made by some few of the members, who said, what then? But he proceeded*) I say, if they do not, it will be time enough to confer with them afterwards: And give me leave, I am not afraid to say, if a private man, much more the house of Commons, have the law of *England* on their sides, let them be undermined ever so much, one way or other, they will obtain their right sooner or later. The rights of the people of *England* are safer in the hands of their representatives than any other: If they do not like them, they can turn them out, and chuse new ones; but they cannot do so in the case of the Lords.

I beg pardon for my great prolixity: I take it to be of importance, to avoid all contests with the house of Lords, and with *Westminster-hall*, and I think you may do it, by proposing and adjusting a plain declaration of your right by the law and custom of Parliament.

After what hath been said at large concerning the law in this case, especially since it hath received no contradiction in any instance whatsoever; I will avoid the repetition of what has been already offered, and endeavour to shorten your debate, by bringing it something towards a point. It hath been said, that the question now before you is, whether judgment being given in the court of *Queen's-Bench*, a writ of error does not lie in the house of Lords, to reverse that judgment? I cannot by any means, agree that to be the question.

Mr Solicitor  
General, (Sir  
Simon Har-  
court, after-  
wards Lord  
Harcourt,  
and Lord  
Chancellor.)

But that which I take to be the proper question before you is, whether or no it be the sole right of the Commons of *England* to determine their own elections? If you are of that opinion, never let your disease grow to such a head, as to put you upon

on the necessity of complaining of a judgment of the Lords, but rather cheek it in its infancy.

It may perhaps, sound harsh, that a man shall not be admitted to make use, and have the benefit of the law; and yet when that thought is thoroughly digested, I believe no gentleman in this house, but will agree, that there may be many such instances, where you will not endure any suit at law. I cannot give you any better instances, than what have been mentioned to you by a learned Gentleman on the other side, who approves of this proceeding by writ of error; the prosecution against Sir *William Williams* for publishing a libel (as it was called) by direction of this house, and an action against the Serjeant for obeying your commands. If such an action should be brought against the Speaker or Serjeant, should we sit still here to see what they would do in the courts below, and afterwards wait for the event in the house of Lords by writ of error?

'Tis very true; these judgments that are mentioned by that Gentleman continue still unreversed. As to that given against the Speaker he mentioned it as a precedent not fit to be followed; indeed, 'tis a reproach to the house to mention it, since no Parliament hath reversed it. As to the other action against the Serjeant he says, judgment was given against him, and that stands in full force; as I remember that case, it went off upon the form of pleading.

But nothing of that kind being the question now, I beg leave to state what this action is that is now before us; for Gentlemen in the country, who have frequently met with actions, prosecuted without censure for matters relating to elections, may, perhaps, be surprized, till they come to consider what the point is. This is not an action grounded upon any statute whatsoever. 'Tis agreed an action may be maintained where a statute gives a particular remedy, but this is an action founded upon the common

law.

law. Whatever your privileges are, if you will consent to an act of Parliament to make other persons judges of those privileges, so far as you consent, if they pursue the power given them by act of Parliament, there is no wrong done you: But an action brought at common law is that which I think, interferes with the inherent right of this house.

We have, I think, attained to one piece of knowledge upon this debate, that this was the first action that was ever brought of this kind; and gentlemen will not much wonder why this is brought now, when they consider what endeavours have been used to make this house contemptible. I believe this may be thought the most probable method to attain that end.

I would not repeat the precedents that have been quoted, yet I cannot but take notice of that of *Barnardiston* and *Soame*: Those arguments that were made use of for this judgment, in that case were rejected, and the judgment of the Lords was then directly contrary. I should be very glad to hear how the Lords judgment of reversal in that case, and in this are reconcilable. The Commons, at that time, would scarce have suffered such an attempt upon their privileges, and I hope we shall be as careful and as zealous to preserve ours: We have as much power as our predecessors, we shall never suffer for want of power, if we do not suffer for want of will to exert it.

I expect to hear of the great authority of one learned Judge, that differed from the rest; I have the utmost esteem for his judgment, but I am sorry to hear any insinuation, that those Judges who have given their opinion otherwise, are guilty of a breach of their oaths. It hath been touched upon, that whenever any question has been asked the Judges, concerning the privileges of the Lords, or the privileges of the Commons, their answer is recorded for the instruction of all their successors, and to the



honour of both houses of Parliament, that it was a matter above their knowledge: The law of Parliament is above the Judges of the common law, and is not to be subject to their judgment; 'tis *alieni fori*.

And Sir, as I have been informed, this was the answer given in the house of Lords by one of the present Judges, and by what I have heard, it was well he escaped their censure; shewing too much respect to this house gave very great offence.

I beg gentlemen to consider, (I shall not enter into particulars that have been mentioned) whether any thing of this kind would not make you despicable, to the lowest degree, in the world, and expose electors to such mischiefs that none could endure? upon every election that comes before you, 'tis impossible to judge the right of election, but by the right of the electors. If you will endure any person, after you have said he has no right, to go into *Westminster-hall*, and bring an action in the courts there, a Jury may find a verdict, that the house of Commons are mistaken, and that this person hath a right, and judgment shall be given accordingly. Will not this proceeding, that very moment, submit your resolutions to the examination and censure of the inferior courts? May not they say, they vote for one another, we have detected them all? That they are a parcel of people packed together, and not one of them elected as they should be.

What condition the magistrate will be in, hath been mentioned already; when a multitude hath a right, and every body may bring his action, can any Magistrate, (a Constable, as in this case) bear the expences of a hundred or a thousand actions at law? There will not be wanting some to prosecute a Magistrate with all the violence possible.

Tho' I can by no means agree, that this matter is to be determined according to the common rules  
and

and methods of law, but according to the course of Parliament; yet I shall compare it with some other cases in the law.

That which makes these persons hardships the greater, is, these Magistrates are not people that officiously interpose to take a poll at elections, and make a return; but these are men, who, by the duty of their office, are obliged to do it; and if they do not execute their office you punish them; and if they do execute their office, and give you satisfaction, yet if you let this be examined in another place, after you have said they have done well, they may be punished for doing so.

I will compare this with one or two common cases that have not been mentioned; suppose a person should exhibit an indictment against another maliciously; he does this wilfully, and an action does lie against him; but if a Grand-juryman find a bill against a man, the law will not admit an averment that it was done maliciously, because he was obliged by his office to do it: So it is in the case of a witness, because he is brought in by the process of the court: So it is in the case of Judges. And is it not equally the duty of a Magistrate to determine upon the poll, and afterwards to make a return? And is not that examinable before you?

A great deal might be said further upon this, but I hope 'tis pretty unnecessary: And that no body can have any doubt but that our privileges are very much concerned in this question, and what the consequences would be; therefore I would humbly propose for the question what another gentleman hath hinted at, which may reduce this debate to a particular point.

We certainly have such a thing as the law and custom of Parliament, and that is very well known, and upon that foot I desire you would put a question to this effect.

F 3

“ That

“ That the sole right of examining and determining all matters relating to the election of members to serve in Parliament, except in such cases as are otherwise provided for by an act of Parliament, is in the house of Commons; and that neither the qualification of the electors, or the right of the persons elected, is elsewhere cognizable or determinable.

*Members.* The question, the question.

*Mr. Smith.*

SIR, I speak only to your order, that gentlemen would not interrupt one another by calling for the question, but give diligent attention to the debate, for this is a matter of great consequence.

Then Mr. *Freeman* (in the chair) stated a question on his paper to the effect proposed by Mr. *Sollicitor*, and read the same to the Committee.

*Sir Christopher Musgrave.*

I AM very willing to hear any gentleman that will stand up and speak, and you have had a very good hint given you by an honourable person, that this is a business of great moment; and I hope we shall continue to do as we have done, that is, to hear gentlemen patiently; and that we may not be guilty of any disorder, I move you for candles to be brought in.

Then the question was put, and carried for candles.

And they were brought in accordingly.

*Mr. Dorrer,*  
afterwards a  
Judge.

Mr. *Freeman*, you have now a question upon your paper, but that which I take to be the question, is, whether a freeholder, or a freeman, who hath a right to give his vote for his representatives in Parliament, may arbitrarily and maliciously be deprived of that privilege, without any redress in any court whatsoever.

This I take to be the case before you, 'tis said to be of great consequence, and I do take it to be of as great consequence as any thing that ever came before either house; and I don't look upon it only

to

to concern the jurisdiction of the Lords and Commons, but to affect every part of the constitution, and the Queen the head thereof, in the highest degree. For it comes to this; if the Lords have not a right to determine in this matter, which by writ of error is regularly brought before them, we shall be turned into a state of villenage, and the people will be deprived of chusing their own representatives without relief, and shall not have relief by her Majesty in the court of *Queen's-bench*, nor before her in the court of Parliament, where, in consideration of law, she is always present, and where by our law is the last appeal; and there will be a failure and an interruption of justice, and our constitution, in relation to ourselves, will be so far changed, that 'twill be impossible there should be any right representatives of the people: For 'twill not be the people then that will chuse, but the officer may arbitrarily refuse and return whom he thinks fit, and the particular person will be without remedy. For whatever gentlemen apprehend, if the right of return be not controverted, which way can any particular man bring his case before you? and what remedy shall he have if not by action? I will not say there has not, (but I will turn the argument, and put it upon them to shew there has;) but I believe there never was any particular application to the Committee of privileges, where the injury has been done to a particular man, which is the present case: And this matter is found by a Jury that was struck, and not one man of the Jury but of quality, and approved on both sides: And I think, tho' it never came before the Parliament, nor the Committee of privileges, they might consider of a particular injury.

And as for the notion that hath been taken up, that where the house of Commons have a jurisdiction, there the party is in all cases without remedy in any other court: Sure that is not according to truth;



for in the case of a false return, there is a publick injury, that does not hinder the party from obtaining satisfaction as to his particular injury; and if no action lies, there can be no satisfaction; for this house hath not awarded damages in any case, notwithstanding the case cited; for that was only costs for the man's trouble in coming up to be examined before this house. And if they should award damages, there is no way of levying those damages; what writ can we issue out? And if this person be without remedy at law, he must sit down without any redress whatsoever.

There may be a multitude of cases, where this house hath a jurisdiction as far as concerns the publick and themselves, and the party shall have his action also.

If I receive a blow in this house, 'tis a violation of the privilege of this house, and this house can take jurisdiction of it, and censure the person that hath done the injury; but will any man say, that an action of battery will not lie at the common law in that case?

There was the case of *Sir Thomas Clarges*: At the time of his election there was one *Roe* spoke words to his prejudice: He might certainly have complained to this house of it; (you had an instance, I think, last session, of one that complained, for some such injury, against the Lord Bishop of *Worcester*, and the house took it into consideration, which *Sir Thomas Clarges* might have done,) but he brought his action, and recovered considerable damages; and afterwards a writ of error was brought in the *King's-Bench*, and judgment was affirmed.

There is a case not within any provision of your law, and that is, where a Sheriff made a return, and he delivered this to a private messenger to bring up to the crown-office. The messenger by the way thought fit to vitiate the return, and make another return than what he received from the Sheriff: For this

this an action was brought, and he recovered at law against this messenger, for the private damage he had done him. Certainly otherwise the law would be defective.

In another case, the Sheriff adjourned, in prejudice to a candidate, to a corn-field; an action was brought against this Sheriff, at law, for the damages he had done this gentleman, and it was maintained; and I dare say more cases may be put: Which shews that your having a jurisdiction as to what concerns the publick, does not exclude the party, but he may have an action for his private injury.

A great many positions I have heard, which I take not to be true, particularly this, "That there is no remedy at law, but in cases provided for by the statutes." That is not so, these statutes imply the contrary. The first says, whereas there was not a sufficient remedy, therefore that gives a more compleat remedy, and so the Judges declared in the case of *Barnardiston* and *Soame*.

Sir, they have told us of the cases of *Barnardiston* and *Soame*, and of *Nevill* and *Strode*; with humble submission to you, those cases go so far as to prove the jurisdiction of the Lords, and the inferior courts: That of *Barnardiston* and *Soame*, was an action tried before the court of *King's-Bench*, and a set of as learned Judges as ever were before, or since; and three of them were of opinion for the action, and my Lord Chief Justice *Hale* was one of them; who the term before he surrendred his character, did thus express himself: "He gave thanks to God, that he had spared him to that time, that he was able to keep his cushion, and declare his conscience in that place." But afterwards it had its fate, a writ of error was brought in the Exchequer-chamber; Mr. Justice *Levinz* that reports it, says it appears, that those who argued against the judgment in the *King's-Bench* were made Judges, and they themselves afterwards determined the case. And every body knows how valuable it was at that time, to know the

the price of an house of Commons, and an *English* Parliament. Three Judges were made then in the *Exchequer*, and I think two in the *Common Pleas*. Afterwards it came into the house of Lords, and there the reversal in the *Exchequer* was affirmed, for reasons different from what are argued now, and I believe for several good reasons. The Sheriff in that case had made a double return, and the Sheriff might do it for his own indemnity, for it was no more than finding a special verdict; and therefore the saying, *falsa & malitiose*, being put to a thing that was in it self right, it would not alter the nature of the thing. Another reason they went upon was, they said this double return was a void return, and for that reason the action did not lie; and upon these reasons depended that judgment. That Gentleman who said that only four or five Lords dissented, is under a great mistake; four or five Lords only, I believe, entered their dissent, but there was a great number, and near an equality against that judgment; and divers Lords, now in that house, were against that judgment, that did not enter their dissent.

Then, Sir, there is the case of *Nevill* and *Strode*, and that was first a judgment in the *Common Pleas*, and when it had taken its progress in *Westminster-hall*, it came before the house of Lords; and the Lords returned it back again to *Westminster hall*, and ordered all the Judges of *England* to deliver their opinion in it. That was founded upon an ordinance of those times; *Berkshire* was to send five Knights, and *Nevill* was one of them that were elected, but not returned: There they said, in that case that ordinance was intirely new, and that case did not recommend it self by the known laws of the land, and for that reason they would not give judgment, for wages could not be levied for five such Knights. And when afterwards they were to give judgment, the right constitution had recovered it self.

Now,

Now, as to the Lords right to receive a writ of error in this case: You have address'd to them that they would receive a writ of error, at a time when your privileges were invaded. That was the case of my Lord *Hollis*, who with others was informed against, 5 *Car.* for having spoke words in this house that did affect the government: And he pleaded to the jurisdiction of the court, (is there any such thing here? No they have submitted to it;) and the court over-ruled their plea to the jurisdiction, and that judgment continued in force, (as some others which have been since do now, which it were well if they were reversed,) 'till this house took notice of it; and in 1667, they desired a conference with the house of Lords. The Chair-Man was my Lord Chief Justice *Vaughan*, and this house there complain'd how they were griev'd by that judgment; and after repeated conferences, both houses did consent to this expedient, that my Lord *Hollis* being the only survivor, should be desired to bring a writ of error in the house of Lords, and he did so, and the Lords in that case did you justice and reversed the judgment.

As to your passing this vote, what it will signify I cannot tell. What signified a vote you pass'd before about the year eighty, that the putting the laws in execution against protestant dissenters, was an injury to the publick, and a subversion of the government; and that those that put them in execution, should be looked upon as enemies to the King and kingdom? The consequence was, that all the laws against popery were put in execution against protestants more than they were before. The Judges in *Westminster-hall* said, this vote had not pass'd into a law, and they could not take notice of it. I hope we shall do nothing that will lessen our selves, nor any thing but what will be effectual for the ends for which 'tis propos'd.

Mr.



Sir Joseph  
Jekyll, (af-  
terwards  
Master of  
the Rolls.)

Mr. *Freeman*, I consider you have been a long time in this debate, and a great deal of it has been spent, either in suggestions contrary to what appears before you, or else in questions altogether improper for the consideration of the Committee; and therefore it is necessary to look back to that which gave occasion to the present dispute.

The Committee hath a copy of the proceedings of this action referred to them, but it hath not been read; and I am confident if it had, and had been attended to by Gentlemen, they would scarce have said that the Lords in the judgment they gave, did any thing in opposition to your judgment, or in derogation of your privileges.

Before the action was brought, there was a resolution of the house of Commons, that the right of election for the borough of *Ailesbury*, was in the inhabitants not receiving alms. 'Tis from that resolution the plaintiff hath taken his rise, and hath brought his action; for by his declaration he makes his case to be, that he was an inhabitant of that borough, not receiving alms; and that the constables, falsely and maliciously, obstructed and hindred him from giving his vote at the election there. The constables plead, *Not guilty*, and the matter goes to a Jury, and they find for the plaintiff, and give him five pounds damages: Which is in effect a finding that the plaintiff was an inhabitant, not receiving alms, and that he was obstructed and hindred from voting by those constables, and that it was done *falso & malitiose*, and to his damage. And this may serve to demonstrate, that the proceeding at law has not been in opposition, but in conformity to your judgment.

Now let us consider, whether the bringing of this action is a violation of your privileges: A great many things have been said not proper for you to deliberate upon; one, that this will encourage a multitude of suits; another, that this action was  
never

never brought before, and several other matters which go to the question, whether the action will lie. Now that is not the question here; but the true and only question before you, is, whether this action was brought in violation of your privileges; for if there be no breach of privilege in it, I know of no authority we have to stop the course of legal proceedings. And as to that but one thing (as I conceive) has been said materially, which is this, that this is a parliamentary case, and appertains to your jurisdiction; and the Judges of the common law, are not Judges of the law of Parliament, and therefore they ought not to have given the plaintiff his judgment, (and it must be admitted the Lords ought not to have given any judgment, but what the Judges ought to have given.) To maintain this, it hath been said, and undoubtedly it is true, that this house hath a right to judge elections; and it is as true, that in order to come to that determination, it is incidently necessary that the house do judge of the right of electors; and it has been said, (but that I deny) that the right of the electors is by the law of Parliament.

I take the right of every elector in *England* to accrue to him by the common law, for he is under one or other of these qualifications: Either he is a freeholder, and then he has a right to vote for Knights of the shire; or he has a right by charter, or a right by prescription; which two last rights take in the right of voting in all cities and boroughs. Now I would be glad to know whether the right of a freeholder is not by the common law? Is it not an estate, with all its privileges and services, created by that law? Whether a right by charter is not by the common law? Is it not that law that enables the crown to grant charters, and qualifies that power? Whether a right by prescription is not by the common law? Is not prescription, common usage? And is the common law, any thing but com-

common usage? So that the right of every elector being by the common law, the judgment of that right is primarily and originally in the courts of law. The freeholders right of voting, is of the essence of his freehold; and you may as well take away his freehold, as take away his right to vote, which he has by virtue of that freehold, and then tell him he must come to the house of Commons to recover it. And the same may be said of those several interests, which give a right of voting in cities and boroughs. And thus, I hope, I have made it out, that a right of voting is not a parliamentary right, but an ordinary legal one, and the common law. Judges have the judgment of it originally; and it is incidently only that the house has a power of judging of it, and that too according to the rules of the common law; which is a further demonstration, that it is a common-law right; for it would be absurd to say, a man has a right by one law, which is to be judged by the rules of another.

Then what course has the plaintiff taken; he has a right by the common law to choose Burgesses for *Ailesbury*: That right has been invaded, and he has gone to the common law for redress, and from no other power could he have it; for this house, or the Committee of elections, cannot give a remedy in this case, that is, cannot make the person injured reparation for the damages done him, by obstructing him in the exercise of his privilege: And that is the thing the learned Gentlemen, who have spoke in this debate, have passed by: And these are the material points, that this is a right at common law, and this house cannot apply a remedy.

But it has been said, that the house will examine, not only on behalf of the elected person, but of the electors. 'Tis true, but in order to what? To see whether you have a right member here, and for no other end; for I challenge any Gentleman, to shew me one instance of a single man who came  
hither.

hither and complained, that he had a right to vote, and was hindred from voting, and made that solely to be the offence of the officer. Did the house, or would the house receive such a complaint? And yet he may go with that complaint to the law: For whether the person he would vote for be returned or not, the injury is the hindering him from enjoying his privilege: And it cannot be made an injury, or not an injury, by matter *ex post facto*; that is, by the officer's returning, or not returning the candidates. And tho' the officer should repent him, and not carry his injustice so far as to make a false return, yet it is of use, that the law will redress the wrong done to the voter, and thereby, perhaps, stop the first steps or approaches towards a false return.

But if I should admit the house would receive the single petition of a voter, who was refused, and when the person he would have voted for was returned, yet the house cannot make him reparation; all we can do, is to censure the officer, but we cannot make the person complaining whole, in point of damages. Indeed it has been said, the house can give damages, and there was an instance given of Mr. *Tankred*, who complained against a clergyman, and the house ordered Mr. *Tankred* to pay him costs: So was Sir *George Meggot* ordered to pay costs to the member he causelessly petitioned against, \* and the like is provided for at the beginning of every session.

\* The Case of Sir *George Meggot*, 23 Nov. 8 *Willielmi. R.*

A complaint being made to the house, that Sir *George Meggot* had prosecuted at law several persons, for what they had testified the last session at the Committee of privileges and elections, upon hearing the matter touching the election for the borough of *Southwark*; it was referred to the Committee of privileges to examine the matter of the said complaint, and report their opinion.

4 Decemb.



session. But are these instances of any petitioner repaired in damages by this house? No, these are instances against petitioners, not in favour of them; nor are damages given in those cases, but costs; all that is provided for, is, that persons frivolously complained against shall not be out of pocket. And by a mean you have a jurisdiction in point of expences, but not in point of damages; for you may order the wrong doer into custody, and make his payment of costs to the injured person the price of his liberty; but there is no direct remedy, even for costs.

But it is apprehended, here may be a clashing of jurisdictions, and if the party should be allowed to go to law, the courts of law may be of one opinion, and this house of another. This is a supposition the law does not allow of, for this is to suppose courts of justice will not do right. It will be allowed to me that your determination will always be just, and other courts the law supposes will do right too,

4 Decemb. 8 *Willielmi*. A report was made of the matter of fact, and that the Committee had come to this resolution: That Sir George Meggot having prosecuted, at law, *Thomas Malyn*, and *John Ladd*, for what they testified at the Committee of privileges and elections the last session, upon hearing of the matter touching the election for the borough of *Southwark*, was guilty of a breach of privilege.

The house then agreed with the Committee, and ordered Sir *George Meggot* to be taken into custody of the Serjeant at arms.

The Case of Mr. *Tankred*, 20 Jan. 9 *Willielmi*. R.

Mr. *Tankred* complained to the house of a breach of privilege against Mr. *Edward Morris*, minister of *Aldborough*, in the county of *York*; for that the said *Morris* had intercepted letters of Mr. *Tankred's* which were sent by the post.

14 Feb. 10 *Willielmi* R. Mr. *Morris* attending, was brought in, and the house having heard him, and his witness, resolved, that there was no ground of complaint of breach of privilege, and ordered that Mr. *Morris* should be discharged from any further attendance, and that he should be paid the charge of his attendance by Mr. *Tankred*.

and

and then they will determine as you; and your determination, and that of the law, as I said before, has been the same in this case. But then, as the supposition of law is, that all courts will do right, so human frailty supposes there may be, an error in judgment: And yet courts must have jurisdiction, or else there can be no administration of justice among men, since there is no judicature short of another world, that can pretend to an unerring judgment. And now I will shew you the several courts have different jurisdiction of the same fact, and the law allows them, notwithstanding there may be diversity of judgments. The court of *Common Pleas* may punish a person for assaulting an officer in the execution of their process, as a contempt to that court; but at the same time, for the same matter, the offender may be punished in the *King's-Bench*, as it is a breach of the publick peace; and the officer may, if he pleases, bring his action in the court of *Exchequer* for the damage done him.

I would observe a little upon the cases cited, and that as short as possible; the first is that of *Nevill and Strode*; I have looked into the journal of 1659, and the only book of our law, where that case is reported, and that is *Siderfin's* second reports; and that was upon writs issued out by *Cromwell*, whereby he appointed counties to choose differently, some three, some four, some five members; Mr. *Nevill* who was a member of the long Parliament, stood for one of the five Knights for the county of *Berks*; they chose him, but he was not returned, and therefore he brought his action in the *Common Pleas*: That action depended there some time, and thereupon the Justices brought the record into this house for difficulty, and desired the house would come to a determination in it, (and by the way, there was no house of Lords in being at that time; for it was in the time of the long Parliament, who had usurped the whole legislative, as well as the executive power)

and no wonder the Judges complimented them with the determination of that question, since they were their creatures, and had their commissions from them. Well, but the record being brought in, the house appointed a day to consider of the matter, and when they saw the plaintiff had proceeded according to the known methods of law, they gave no judgment in it, but sent it back to *Westminster-hall*, and there it was again argued, but never adjudged. And that there was no judgment given, is easy to account for, if the judges thought such an action would lie; for at that time, the long Parliament was upon the point of bringing in the King, and restoring the laws: And if they had given judgment for the plaintiff, they had given a sanction to the highest usurpation of the protector, and all his wild fancies of changing the constitution at his will and pleasure. And indeed the plaintiff had disaffirmed the authority of the long Parliament, which he had with great zeal asserted, and of which he was himself a member. But if the Judges had thought such an action would not lie, they might, without any scruple, have given judgment for the defendant. And this seems to me a strong authority that *Westminster-Hall* thought such an action would lie: And it is very remarkable, that when that house of Commons (as they called themselves) had usurped the exorbitant power I mentioned before, they did not proceed to assume the jurisdiction of the common law.

The next case is that of *Soame* and *Barnardiston*, in which *Westminster-hall* was divided: My Lord *Hale* was of one opinion, and my Lord *North* of another, and there were six and six of a side, and the matter came by writ of error into the house of Lords, and a Gentleman said, 800 *l.* was worth contending for. But I am apt to think Sir *Samuel Barnardiston* did not hope to recover one farthing of the money, for *Soame* was dead, and I believe with-  
out

out affets: For in all the proceedings in the house of Lords, none appeared on the behalf of his widow, she had no council there: But it was argued against Sir *Samuel Barnardiston*, by Mr. *Mountague*, the late Lord Chief Baron, to vindicate the proceedings of the *Exchequer* chamber, and judgment was given, as hath been said, in the house of Lords.

But what happened next? The Commons were so uneasy under that judgment, and the injury which might be done to the people, from whom they deriv'd their authority, by double, or false returns, that the next thing was the interposition of the legislature to apply a remedy, and the Lords came into it, though it was a great discredit to the reversal of that judgment; for the act of the 7th of the late King, declares false returns to be against law, and provides an action shall lie where an officer makes a return falsely and maliciously; they never thought it an ensnaring thing, but knew malice might be tried in that as well as many other cases: And I wonder to hear *falso & malitiose* should be so much words of course. Men are tried for their lives every day, where malice is the main point in issue. If a man does without any provocation kill another, the law intends malice, and that is murder: So here, if an Officer refuseth the vote of one, who hath a clear and indisputable right, the law presumes it done maliciously; but if the Officer refuses a man's vote, and there is any probable cause, or colour to do it, or his right of voting is doubtful, the Judge will tell the Jury they ought to find for the defendant; and therefore it is only in a plain and glaring case, that a man can prevail in such an action; and this by the way, is an answer to that objection, that such actions as these will bring all your elections to be determined by the Lords; since an officer can never be found guilty by a Jury upon this action, where there is a controversy or dispute, much less can the Lords try, or determine any thing of the right.



There is another case, and that is the case of Mr. *Onslow* against the Bailiff of *Hasslemere*; that judgment was against the action; and was given by my Lord Chief-Justice *North*, and the rest of the Judges of the *Common-Pleas*, upon the authority of the judgment in the case of *Soame* and *Barnardiston*, in the *Exchequer* chamber; and no wonder they would not give a judgment contrary to what some of themselves had given in another place.

Sir, this question hath been before this house not long since, whether a candidate should be hindered from proceeding upon an action at law, before he had come to this house for their determination, whether he was chosen or no? And this house upon a solemn debate, adjudged that he might go to law before he had come hither; and I desire your clerk may read a word or two in your journal, 'tis *Monday 13 March 98*.

*Clerk reads.* ' The house being acquainted, that  
' *John Buller*, Esq; who was candidate at the election  
' for choice of members to serve in this present Par-  
' liament, for the borough of *Lescard*, in the county  
' of *Cornwall*, hath brought an action upon the sta-  
' tute made in the 7th year of his Majesty's reign,  
' against Mr. *Richard Roberts*, Mayor of the said bo-  
' rough, for the sum of 500*l.* for making a false  
' return of *William Bridges*, Esq; although the said  
' Mr. *Buller* never petitioned against, or questioned  
' the said return in this house, and a debate arising  
' thereupon, resolved that the debate be adjourn-  
' ed 'till *Wednesday* morning next.'

Sir *Joseph*  
*Jekyll*.

Now I desire you to look upon *Wednesday* the 15th day of *March*, when that debate was resumed.

*Clerk reads.* ' This was the 15th of *March*. The  
' house resumed the adjourned debate relating to Mr.  
' *Buller*; and after a long debate, the same fell,  
' without any thing done thereupon.'

*Members.* Well, what then?

I TAKE

I TAKE this to be a plain authority, that will govern the case before you: For if it was not reasonable to restrain a man, from proceeding at law upon the statute, before he had come hither for a determination, when it was to controvert the very election, which was undoubtedly proper for the Judicature of the house; much less will it be reasonable to restrain a proceeding at law, which is not to controvert the election, and upon a case not proper for the judicature of the house; and the house doing nothing upon that complaint, is a declaration, that the house could not justly do any thing upon it: For if a man makes a motion in any other court, and the court declares they will do nothing upon it, I desire to know whether that be not a declaration of that court, that the motion is unreasonable, and it is all the judgment the court gives in such a case. And I had the honour to sit in Parliament when that motion was made, and very much pressed; and some that have spoke in this debate, were then of an opinion contrary to what they are now, and were not for stopping the course of law.

Sir, I apprehend the action is well founded in this case; this man had a right to vote, he had an injury done him in respect to that right, he hath sought to be repaired in a proper way, and he could not be repaired in any other: I am for doing nothing to his prejudice, and therefore am against your question.

SIR, I shall trouble you but with a few words after this long debate: And rather to understand the terms you are debating on, than to think any thing I can offer to be of any great weight. But I take the question not to be as some have represented it, but to be singly this in general, whether an action does lie at common law in the case before you?

There is no need to mention the particular circumstances of *Ailesbury* election, for if that was the single case, you might have taken another method. I will not insist, that in this very election, a great

Sir Joseph  
Fikyll.

Mr. Harley,  
(Speaker.)

number of those inhabitants petitioned this house upon this point, that their votes were denied: And after this petition had lain in the house some time, it was withdrawn by their own consent; I do not trouble my self whether this particular man was amongst them, nor will I trouble you with what may reasonably be urged from this; but leave that to other gentlemen.

But I desire we may understand the terms upon which we are debating; we have had maxims of the common law, and the rights of Parliament mentioned. The common law is the common usage of the realm; I take the laws of Parliament to be the common law of the land, and the usage of Parliament to be the law of Parliament; and the law of Parliament is to be known by usage, as the common law is.

Then how shall we know whether this belongs to the common law? If there be any other way, I should be glad to be informed; but I think there is no other way of knowing, whether an action will lie at common law, but by reason or usage, and precedents. Now, if by reason; it is to be made out by what necessarily attends this case, or some other cases like it. And pray what do they offer, that it lies at common law? do they give you any precedent? What reason do they offer? I suppose that which was read last is no precedent in this case; for that was an action upon the statute; or that the courts below take upon them a Legislature instead of a Judicature, which must be, if there be no rule for them to go by. I take the question you have read, to consist of two parts; one asserting your own right, the other is negative, that no other courts have any right, but in cases particularly directed by the statute.

I cannot think this of electors and elected a privilege, I take it to be a service both in the electors and elected; and formerly it was reckoned an hard service,

service, I know not how they find it now. 'Tis a service, I take it, because all who are electors are liable to pay the wages, and I take that to be a burden: And not only from that, but the very towns that were boroughs, and elected, when one paid fifteenths, the other paid tenths; so that I take it to be a service: And if a Franchise, see the consequence, it will be in the power of the crown to create as many boroughs as they please.

Then consider, this house is in possession of this power, as of right, and I do not find the common law in possession of any such right. Then what do they offer to bring it in, but that there would be some failure of justice? Now I took is, that the Judges are *jus dicere*, and not *jus dare*: If any thing want a provision to be made for it, it must be done by the legislative power; and if the electors want it, provision must be made for them, that they shall have an action. And those gentlemen, who think that necessary, may bring in a bill to that purpose, and take the sense of the legislature upon it in a regular way.

The question before you now is, whether the examination, hearing, and determination of all matters relating to elections, where some statutes have not particularly directed otherwise, does not belong to this house? There was a famous case of *Goodwin*, that was contested by the crown, and the crown pretended to send out another writ. And there they say, that as to members of Parliament, their attendance, &c. they are the sole Judge: And this they lay before King *James* in the first year of his reign, and claim it as their sole right, and the King's second writ was determined to be void.

But a gentleman makes an argument, if one should strike another in the house, what remedy? Why there is an act made for that case in *Henry VI's* time.



I think now the matter will turn upon this: Say they, tis true you can try Elections, and who are the electors; but here is one thing remains, that is, to give satisfaction. Have they any precedents for this? I believe the precedents are without; they have a power for what is necessary, nothing less than a law can give the other.

Gentlemen say, there may be a difference in judgment in courts below, but they are subordinate, and there lies an appeal: But in this case, all courts will be co-ordinate with you; and therefore if that be a grievance, nay a solecism in government, prevent it now.

'Tis said, what will your vote do? That is pretty odd: If they would have an act of Parliament, your vote must be the ground of it.

You are Judges of the whole, but say some, you cannot give the pecuniary satisfaction. Well, suppose so, but you can restore all to their right. But let me say this, if you would not set up a co-ordinate power with you in matters of elections, and which will be too hard for you at last, I hope it will be a warning to you, to take more care in the judging of your elections for the time to come.

If the judgment belongs to you, and you are possessed of it for so long a tract of time, that no body can offer any thing against it since *H. IV's* time; 'till gentlemen shew me some reason, why the common law should lay hold of it, I must be of opinion, that it does belong to you, and no court can take cognizance of it but you, except where it is otherwise provided for by statute.

Sir Thomas  
Meres.

SIR, I shall not enter into a discourse, and repeat what I remember of former times. I will say but this, let others answer it better if they can. As to the words *falso & malitiose*, it seems one chief Justice said, they were words of importance, and must be proved; another chief Justice said, they were only words of course, that is, like pepper and vinegar to  
a slice

a slice of roast beef; so there is one chief Justice, that spoke last but one, against another.

As to making satisfaction, I confess, I like very well what that gentleman said on the right hand, if there was any precedent for it, I agree it would do very well, that this house could give damages, and we will make the best of it; but most of these things have spite in them, and these actions are brought with spite. Now this we can do, we can punish the officer, and there is revenge in that, and that is a sweet bit, and some satisfaction. What further occurs to me, hath been spoken by other gentlemen, better than I can do it; and I shall not repeat, it being so late in the night.

I PERFECTLY agree with that honourable and learned gentleman that spoke last but one in this debate, in what he laid down as an undoubted maxim or ground-work, for the opinion he delivered, that the law and custom of Parliament is part of the law of the land, and as such ought to be taken notice of by all persons. And I think 'tis the exact standard by which we ought to walk; and the deduction my poor judgment is apt to make from that principle, is this, That we ought not out of zeal to our own jurisdiction, to go one step farther than that known law and custom of Parliament will warrant us to do.

Now I take it upon this debate, that this law and custom of Parliament doth not give the subject, who is injured by his vote being denied him, any satisfaction, or recompence for that damage: And am the rather confirmed in that opinion, because that very learned and honourable gentleman, who is particularly knowing in the laws and precedents of Parliament, has not pleased to represent to you any one precedent, where the subject so injured hath complained to the Parliament, and had redress in that particular; but all petitions have been either from the candidates, or electors, complaining of an undue return.

Mr. Cowper,  
(afterwards  
Earl  
Cowper.)

return. So that it cannot be shewed, that it hath been the law and custom of Parliament to give that remedy, or relief in Parliament, which is the subject matter, or end of the action now in question.

I go likewise along with him, and every gentleman that hath spoke in this debate, that by the law and custom of Parliament, none but your selves can determine who are rightly elected, in order to displace, or place them here; and incident to that end, you have the sole right of considering the right of the electors; I say so far forth, as it is necessarily incident to determine who shall, and who shall not sit here; and no other court can consider the right of the electors, in order to determine the right of any to sit in this place, further than you by some act of Parliament have given them leave. But this matter having now been disputed a great while, you have had it fully represented to you, how they came to hold the scales in this action in *Westminster-hall*, not as in a case where the right of election, or the privileges of this house was the subject matter of the question; the action was brought there only to intitle the injured subject to damages. And this matter ought to be considered, as it relates to different ends and purposes, and upon that it turned in the case of *Soame* and *Barnardiston*. They who thought that action lay, thought courts below might try the merits of an election to repair damages, not to determine who should be admitted to sit in Parliament.

And I will venture to say, that the judgment of the house of Lords that confirmed that reversal, was in no wise, at that time, satisfactory to the Commons of *England*.

But the act of Parliament that hath been mentioned, was built upon this, that the reversal of the judgment between *Barnardiston* and *Soame* was not right, and so that act was procured to set up the right of the Commons of *England*, that was thought

to be invaded by that reversal, or judgment, that the action upon the case did not lie.

I will go a step farther, that as you have the sole power to try the right of election, and consider the right of the electors, to the end I mentioned, to determine who shall be admitted here; so I grant it hath been the law and custom of Parliaments, (how ancient I will not inquire) to punish the offenders, particularly the Officer and Magistrate presiding at the election, for doing any wrong, or injury in his office on that occasion, in order to make him an example; or as an offender against the publick, and the constitution of Parliament: So far I grant you have just right to go, and no body ought to interfere with you.

But now we are carrying the matter yet further: The question now is not, whether we have the sole right to punish the Officer as a publick offender; this action is not brought to that end, nor is there a word in the declaration who was, or who was not duly elected, or that the constitution or privilege of Parliament was violated. But the plaintiff only says he had a right to vote, and that he was injuriously denied it (whether the right or wrong member was returned, he meddles not with it) and he submits it to the court and to the law, whether he ought not to have damages for that wrong? And the question now is, whether that demand of damages was not well founded? Or whether there is any thing in this, contrary to the law and constitution of Parliament? Law depending on custom, certainly consists not in, and is not to be made out by one act, but by often reiterated acts: And that must be very far from the law and custom of Parliament, which is so far from being a frequent repetition of acts, or precedents, that in this case, there is not one instance, where an elector hath brought his petition, without regard to the return made, and desired his particular right to vote might be tried and



and asserted, he having been obstructed and injured in giving his vote: Nor was ever such elector repaired in damages here, nor ever had his particular right to vote resolved, or asserted by any judgment, or declaration of this house.

The learned and honourable person, upon whose reasoning I am humbly offering my thoughts, with great deference, was pleased to instance in the case of five persons, in the town of *Aylesbury*, who exhibited a petition, and complained of an injury done them at an election for that town, at which their votes were refused. And if they complained of nothing further, and did not conclude to the right of the return, and complain, that they were unduly represented, I admit it had been so far an instance to his purpose. But if they had so complained only of the injury done the petitioners in denying their votes; yet he is pleased to tell you, this petition was withdrawn, and by the consent of the persons who presented it, and so came to nothing. I suppose this is the single precedent to prove the law and custom of Parliament, because there is no other instance given. It does not appear upon what ground or reasons it was withdrawn; and I having no particular memory of that passage, you will pardon me, if I am mistaken in my conjecture. I believe no man, that seeks a remedy, would desist, if he expected to succeed; so I take the most probable reason (till another appear) to be, that they were hopeless of doing any good with it: And one petition not prosecuted, will hardly shew, that Parliaments use to give redress in such cases. Now if that precedent had been successful, if the petition had been referred to a Committee, if damages had been given upon the complaint, and a declarative vote had passed to assert the petitioners right, (but I did not observe there were any such proceedings,) then, indeed, I must admit, that it was one precedent in point, and a very material one; and it would

would have proved, that we had once held plea of this matter, and by consequence, if we had often done so, that no body else had to do with it. But if that precedent be defective, and none can shew, that ever any petition was exhibited by any elector, for a personal injury done him in rejecting his vote, tho' the person he would have voted for was returned, this action may lie for such an injury done to an elector, without interfering with any law, or usage of Parliament, that hath yet been made evident; and that brings me to another matter of that honourable person's discourse, and I acknowledge he entered into it with a great deal of candour and fairness.

He was pleased to say, he thought it was admitted in this debate, that the like action is not to be found in all the reports, or books of law. I would allow his objection its due weight, and admit what I take his meaning to be, that this action, in the particular species of it, may be new, tho' it's old in its genus, or the principal materials on which it is built; and I take it, if by the general rule, or reason of law for such an action, it be warranted, this action (as a thousand other actions on the case may) will lie, tho' in all the parts 'tis not to be exactly paralleled; for it is the very nature of, and implied in the name of an action upon the case, that every man may maintain it on his particular case, provided it carry in it the general reason, or ingredients required by law to support such an action, tho', in many circumstances, it may be perfectly new. I see that honourable person understands clearly the necessary incidents of that action; that is, there are to be *Damnum & Injuria*, which I take to mean a damage to the subject, not arising from a lawful, but, which is the consequence, of an unlawful act. Now, says he, first here is no damage, because anciently the attendance was thought a service and a burden, and the right of electing was a service too, and in being deprived of a service. there can be no damage;

damage; and therefore one of the main ingredients of an action of the case is wanting. This is clear reasoning, and either to be answered or submitted to.

It is said, the right of electing was a service, how true, I doubt upon the reason of the thing: A service was often a part of the tenure, by which a man held his land 'till it came up to the crown; and the service was originally created by grant and reservation. Now, can any one imagine, that where one holds a small freehold, any such tenure was created between him and his immediate Lord, originally by reservation, as that he should vote to send members to Parliament?

But if it might be consider'd as a service so created, it will not do the business of the argument, unless you consider it also as a service of burden, without advantage or privilege; for if it be a privilege too, (tho' in its creation it might be a service) then the depriving a man of it is an injury. Now no body can think but that the right to elect a Parliament-man, which is a distinguishing character from the vulgar, and hath its weight in the Legislature, is a privilege; and therefore to be deprived of it, is to be deprived not only of a service and burden, but of a very valuable privilege; and I believe any *Englishman* would think we dealt hardly by him, to deprive him of it, tho' we should tell him, at the same time, we deprived him only of a service and burden, and not of a valuable privilege.

There is another thing occurs on this head: We have been so far from thinking the being elected, a service or burden only, that in the nature of a repeal of those judgments of *Soame* and *Barnardiston*, by a positive law, we have given the elected double damages if he be deprived of that service. Therefore by our own notion, and in our case, 'tis a privilege that ought to be recompenced even with double damages, that is to say, when it concerns our selves.

selves. And shall we declare it a mere service in the case of our electors, not to be recompenced even by single damages, and that after the undoubted methods of the common law have adjudged it their due; for I do not find any body doubts, whether this man has proceeded in the legal method throughout, even in the last resort. The Lords have not judged the fact, they are bound as to the fact by the verdict, and they are unquestionably the Judges of the law on a writ of error. And therefore, as to what has been said, that any fact of an election might come to be determined before the Lords, it is a great mistake, for they judge purely of the law on writs of error, as every one knows, that knows any thing of our constitution. Give me leave to say, we, upon this occasion, judge of this matter only as a matter of law, which may affect our privileges, and tho' we have authority to consider what is law, as it relates to, or may intrench upon our privileges, no body that sits here can think that there lies an appeal in this place, or a second consideration of this matter after the Lords judgment, as 'tis a point of law only, and as it regards the right of the subject. So that an objection in point of law here, to the judgment of the Lords, will not hold otherwise than as it relates to our own privileges; for no body will say, that we are the dernier resort in any other respect. And tho' that is the only point that brings it properly under our consideration; yet I fear we are taking from the subject, in effect, what the law hath adjudged his right, and reversing a legal judgment given in the subjects favour. There are other arguments flung in, to make up the weight only, as that which compares the present to the case of a Dovehouse; in which case, in regard of the multitude of actions that would follow, an action will not lie for every one that is injured by the erecting of it. It is true, where a multitude are injured by one and the



the same fact, it shall not be punished by a multitude of actions; but the publick is to take care of it, because the injury is of a publick nature. But by the same standard and known laws of *England*, if one man is so rash as to commit a multitude of injuries, which severally affect several persons, it was never said, that he became unpunishable by the multitude of his offences, but every one injured has his action against him. I have heard it said, *defendit numerus*, but that is spoken as to the number of offenders, not the number of offences committed by the same man. And these injuries which consist in denying the subject to vote, when of right he ought, will not be multiplied (as is objected) by letting the subject know, that as they may come into Parliament to punish the officer, as a publick offender against the constitution; so the particular person injured, by being denied his vote, may also have an action for the private and particular injury done to him only.

I would mention one thing more: They who have spoke for the other opinion, seem to take it for granted, (which I do not take to be a true way of reasoning) that because in determining who have a right to sit here, we do incidently, and only can, in order to that end, determine who have a right to vote, therefore no other Judicature can try the same matter or right to vote, tho' it be to different ends and purposes.

Now if you will consider the different jurisdictions in the constitution of this kingdom, there is nothing more common, and many instances may be given of it. There are variety of jurisdictions that try the same fact, and yet each hath a sole and separate jurisdiction in that matter, to different ends; and these jurisdictions are not in that respect subordinate to one another: Take the spiritual and temporal; the spiritual is not subordinate, but only restrainable by the temporal,

temporal,

A.  
ten  
as  
rec  
in  
tha  
titl  
por  
by  
cou  
sub  
S  
trial  
the  
but  
juris  
der  
trial  
plac  
And  
nate  
fact.  
to a  
tion  
F  
varie  
This  
we  
a fa  
varie  
hou  
plain  
when  
right  
shall  
by t  
no d  
the c  
and l  
tion  
V

temporal, where they intrench upon the temporal; as in the common instance of matrimony, which directly and abstracted from other purposes, is triable in the spiritual court, and no where else: But yet if that comes to be a question of fact in relation to a title at law, or to make out a descent, why, the temporal courts every day try it, tho' *per se*, and taken by itself, it belongs to the jurisdiction of the spiritual court; and yet these courts are not in that respect subordinate one to another.

So in the case touched upon, of a battery, 'tis not triable in the Common-pleas, as 'tis an offence against the publick peace, by indictment, in order to a fine, but triable in those courts only that have a criminal jurisdiction; but as 'tis a private injury, and in order to recompence the injured in damages, that is triable in the court of Common-pleas, and other places, which have cognizance of civil actions only: And this is not in respect that one court is subordinate to the other, but one holds plea of the same fact, in order to one end; and the other, in order to another end; and there is no clashing of jurisdictions in such cases.

For what hath been objected, that this may create variety of judgments concerning the same right: This does not weigh it seems in our own cases, for we may bring our actions for double damages, for a false return, and yet that may produce the same variety of judgments. So was the opinion of the house in the case behind me cited; and the law is plain, that tho' the last determination of this house, where there hath been any shall determine the right of election, and there the Judges and Jury shall be bound by the last determination, and to act by the same rule; yet in towns where there has been no dispute of the right settled here one way or other, the candidate may notwithstanding bring his action, and he, or the people of the place, may also petition the house of Commons. And then there is the

same objection, for there may be variety of judgments touching the right of election, one in the house of Commons, and another in the courts below. And upon the trial, in order to obtain damages, a Jury, in such cases, where the right had never been settled in Parliament before the election in question, are not directed by the judgment of your house on the same disputed election, nor is any Jury bound to follow such judgment, and if you will go upon a supposition that a Judge and Jury, may go contrary to law and right, or the determinations of the house in the case before you, 'tis an objection which you have overlooked in your own cases; and therefore why should it be an objection to hinder the person whom you represent, of his remedy for the injury done him.

Upon the whole, I am for so much of your question as serves only to declare, that you have the sole power of determining the right of all elections, and even the electors right to vote, to the end to try who is your member, or to punish the officer, as an offender against the constitution: So far is agreeable to the constant law and practice of Parliament. But for that part of the question, which relates to the restraining the electors from bringing their actions for the personal, or private damage done to them, I think it is not agreeable to the law, or constitution of Parliament.

Sir Humphry  
Maskworth.

M<sup>R</sup>. *Freeman*, we are much obliged to the gentlemen that have argued on both sides, who have brought the matter of this debate into a narrow compass: The question is, ' whether an elector be intitled to an action at common law against the officer, ' for recovery of damages, in case his vote which he ' offered, be not taken down in writing, and entered on the poll? or, whether the house of Commons ' have the sole privilege of examining and determining the right, or qualification of every elector to ' give his vote, and to judge of the behaviour of every

ry

'ry Sheriff, and other officer, in taking the poll  
' on the election of members to serve in Parlia-  
' ment.

I am of opinion, with great submission to better judgments, that the house of Commons have a sole right of judicature in these cases, and that the elector is not intitled to an action at common law. I shall endeavour to support this opinion, by answering the arguments that have been made use of to prove the contrary: And first, I crave leave to observe, that the gentlemen who have argued on the other side have not taken notice of a distinction, which seems to be very material in this case, and that is, between an actual force, or violence done by the officer, and a bare omission in point of duty. It is agreed, that in case the officer does by force, or violence, obstruct, or hinder an elector from offering, or pronouncing his vote at an election for which of the candidates he pleases, the elector will be intitled to an action at common law for recovery of damages, for that is personal wrong, and does not concern the right or qualification of an elector to vote in elections: But in case the officer does permit the elector quietly to offer, or pronounce his vote, (as he did in the case of *Asbby*, who pronounced his vote for Sir *Thomas Lee*, and *Symon Mayne*, Esq;) but does not think fit to enter his vote upon the poll, the elector in this case is not intitled to an action at common law for recovery of damages, because he has neither suffered any force or violence, nor is by such omission deprived of his vote: For a vote being once pronounced, the law takes it for the benefit of the publick, tho' the officer be wanting in his duty; and none have power to determine, whether the elector had a legal vote, and whether the officer had sufficient reason to refuse to enter the said vote in the poll, but the house of Commons. If any other persons should have autho-



rity in this case, they will be able to destroy the freedom of elections, and the constitution of Parliament.

It is insisted by some gentlemen, that the electors have no proper remedy, in this case, in the house of Commons, and therefore they must have their remedy at common law: But with great deference to their judgments, the electors have a proper remedy in this house in every respect; for here their votes will be allowed, the legal representatives restored, and the officer will be punished for any wilful default in the execution of his office. This is a remedy that answers the end for which every elector is intitled to give his vote, which is not for a private advantage to himself, but for the general advantage of the whole kingdom. But the action at law is no proper remedy in any respect; for since a vote that is offered and refused, is as good, by the law of Parliament, as a vote that is offered and received, and is so adjudged on the trial of every election in the house of Commons, or else they could not fill their house with legal representatives; it is not proper or reasonable, that an officer should pay damages to an elector that has not suffered any, nor that a publick offence should be punished by a private satisfaction; which is not likely to prevent the evil, preserve the vote, and restore the representative; nor is the same consistent with the constitution, or the publick safety.

The qualification of electors, and the behaviour of officers in all elections, are matters of Parliament; and such matters are not cognizable elsewhere, as hath been often declared by all the Judges of *England*: A Parliamentary case requires a Parliamentary remedy. And since votes have been refused in all elections; if electors, in this case, had been intitled to an action at law, it must be presumed, that some time or other, such an action would have been brought, which yet was never once attempted in any former

former reign; and all those acts of Parliament that were made to give damages in cases relating to elections, do demonstrate that no such damages could be recovered at common law; for if they could, there had been no occasion for making any of those statutes.

It is insisted, that every right must have a remedy, but then the subject must be first deprived of that right, which in this case he was not; and even when he is, he must have his remedy in a proper manner, and in a proper court. There are several sorts of rights and several sorts of laws in *England*, and there are several courts of justice, for the administration of those laws: A man that has a right to a legacy, cannot bring an action at common law, but he has a proper remedy in the spiritual court. The like may be observed of cases that belong to the courts of Chancery, Admiralty, Stannery's, and of the Forest laws. The subject cannot bring actions at common law, in cases that belong to the jurisdiction of other courts. And when my Lord Chief Justice *Coke* enumerates the several laws in this kingdom, he gives the precedence to the law and custom of Parliament, which, he tells us, is superior to the common law in *Westminster-hall*. And as every court at law has it's customs and privileges peculiar to it self, and is sole judge of them, so also the high court of Parliament, *suis propriis legibus & consuetudinibus subsistit*, hath its own power, laws and customs, and is sole Judge thereof. And if an action at common law will not lie for a legacy, where the spiritual court has a jurisdiction, though the temporal courts have, in many respects, a superior authority, such an action will much less lie in a case concerning the Parliament, which is the highest court of the kingdom, and who are sole judges in all cases relating to themselves. But some carry this further, and say, that every right must have a remedy with damages. This may be true in most cases, where a man is deprived

of rights of property and possession; but there are many instances to be given, where a right of franchise or privilege is not intitled to any damage; as a person elected mayor of a Corporation, if the proper officer refuses to swear him, has no action at law for damages, but his remedy is by *Mandamus* out of the *Queen's-Bench*: There is a remedy by *quare impedit*, but not to recover damages. In a writ of right, you shall recover the land but no damages: So in this case, the proper remedy is to have the vote allowed, which can only be done by the house of Commons. Some gentlemen have found out a new distinction, which I never heard before, that the house of Commons have the sole privilege to judge of the rights of electors, and of the behaviour of officers, to one intent, but not to another; that is, in order to determine who are the legal representatives, but not to give damages to the party injured. But, with great submission, there is no weight at all in this distinction: For, as it is plain, that the elector is not, in this case, deprived of his vote, and therefore suffers no damage; so it is also evident, that the judgment of the house of Commons, in matters properly cognizable before them, cannot be contradicted by any other judicature; and therefore, their judgment of the qualification of the elector, and of the behaviour of the officer, must be conclusive to all intents and purposes whatsoever. It is contrary to the reason of all laws, that the behaviour of an officer should be subject to the determination of two independent jurisdictions; or that he should be innocent by the judgment of a superior court, and guilty by the judgment of an inferior; or that he should be twice punished for the same offence. No man can serve two masters: The officer at this rate, will be every way ensnared, and made liable to punishment, whether he does his duty or not; if he accepts illegal votes on the poll, he will forfeit 500 *l.* by the statute, for a false return; if he refuses them,

he

he may be ruined by a multitude of actions; for if one may bring an action, there may five hundred, since every man at this rate, may offer a vote, and bring an action for not entering it upon the poll. How is this consistent with the freedom of elections, in which there ought to be no terror, neither on the electors, nor on the officers? But as the electors should be free to offer their votes, so the officers should be free to judge whether they ought to be entered on the poll, or not; and they ought not to be accountable to any, but the house of Commons, whose servants they are, in all matters relating to elections, and who are entrusted with the determination of all matters and cases relating thereto; and they may as well punish them for taking illegal votes on the poll, as for not taking those that are legal. In neither of which cases have the Judges of the common law any jurisdiction, tho' there is the same reason in both, to take care that every the meanest subject may have relief for any injury done him; but we are not to take more care of the meanest subject than of the whole house of Commons. The greatest subject in *England* ought to have no relief but what is consistent with the law of Parliament, and the safety of the constitution. If an action lies, and upon a judgment on that action, a writ of error lies in the house of Peers, the Lords will be the sole judges at last, who have votes to chuse a house of Commons; which is directly contrary to the fundamental maxim of the law and custom of Parliament, that the two houses are mutual checks to each other, and sole judges of their own privileges.

This is an excellent constitution, and admirably well contrived for the common safety: But how can this constitution be preserved, if the Lords can punish our officers, and govern our elections? This will be the way to destroy all checks, and to make the house of Commons dependent on the Lords; and then I cannot see upon what founda-



tion you can be said to fit here to do any service for your country.

Others insist, that this is a right that is incident to the freehold and freedom of electors; therefore, as their freeholds are cognizable at common law, so is every incident belonging to it. This argument is plausible at first sight, but, in reality there is nothing in it: For tho' the Commons of *England* have submitted their private differences to arbitrators, or Judges, indifferently chosen and appointed by the Prince the common parent of the people; yet they have never submitted their fundamental rights and privileges, which they hold in their publick and political capacities, as a free branch of the high court of Parliament, to any but their own representatives, who are chosen and appointed by themselves. This is not a case, properly speaking, between party and party, but between the Lords and Commons; because the determination of this case brings the whole right in question, who have a privilege to judge of the qualification of electors, to give their votes in election of members to serve in Parliament, whether the Lords or the Commons? It is not now the question who hath the best right to a freehold, or freedom, or to any thing that is incident to it? But whether the Commons of *England* shall have any freeholds, or freedoms at all? Or, which is the same thing in effect, whether they should have any security for those rights or not? For if the Lords are Judges of your privileges, you can hold no right but during their pleasure.

The Lords seem to contend for the right of the subject, but I wish it be not for a power to enable themselves to judge and determine, as they think fit, of all our rights and liberties; for this is the necessary consequence of allowing an elector to have a remedy, in any other place but within these walls.

This is my humble opinion; and if I am mistaken, other Gentlemen will set me right. This is  
certainly

certainly a matter of the highest importance to the welfare of the subject, and I doubt not but they will very well consider it before they give way to the establishing a precedent, that tends to destroy the privileges of this house, or the liberties of their country.

A great tenderness is expressed for this poor man, whose vote has been refused: But whether he had a right to give his vote is very much questioned, and never yet determined by this house, who has the proper judicature thereof. But admitting he had a vote, whether ought to be preferred, a private interest or the publick safety? Whether will be most for the honour of this house, and the interest of our electors, the care of a private person by a new invented action, neither warranted by reason, precedent, or any established law; or the care of the Parliament, and the constitution on which depend the rights and liberties of all the Commons of *England*.

Sir, I beg pardon for taking up so much of your time, but I must confess, it seems to me, that our *All* depends upon a right determination of this matter; for I cannot see any other reason why this new device is supported by the Lords, but only to render you precarious and useless.

Mr. *Freeman*, I shall not trouble you very long at this time of day: I think the point in debate has been truly stated by the Gentlemen who insisted on this question, 'Whether an action will lie for an elector, for having been refused his vote at the election of a member to serve in Parliament? A learned Gentleman would have the question to be, not whether an action will lie; but, whether this house has the sole right of determining that matter, and of giving remedy in it.' I confess I think it is more properly stated the other way: But the thing is scarce worth a dispute, since which way soever you turn the tables, it comes to the same point, and one of the questions will in consequence be resolved by the resolution

Sir Gilbert  
Dolben.

solution of the other: For if that question be put which is proposed by the Gentleman, and carried in the affirmative, that this house has the sole right of determining this, and all other matters whatsoever that concern the right of election; then it must follow that whoever is wronged in any such respect, cannot be redressed by action, since the right of determining in cases of this nature, is not in the courts below, but solely in this house.

I shall not offer you any arguments to prove this sole right, many having been urged by others: But I will consider some things (without taking up much of your time,) that have been offered as objections to it.

Some Gentlemen have made a distinction in this case, between the right of electors, and of the elected: And they will have it, that the courts below may decide the first, but not the last: Whereas, in my poor opinion, the decision of the electors right must necessarily, in many cases, decide who has a right to be elected. For suppose a common case, that one of the candidates insists upon an election by a select number, and the other upon a popular election: If in this case one of the populace be refused his vote, upon a pretence that he is not of the select number, whereupon he brings his action against the officer; will not the event of that trial determine (in consequence) the right of the candidates? Surely it must; since if it go for the plaintiff, he for whom the plaintiff offered to vote, and who had the popular interest, will appear to have had the right of election; and so will the other candidate, if it go for the defendant. Several other cases to the same purpose might be put: So that if an action of this nature should lie, it must (as I apprehend) unavoidably follow, that *Westminster-Hall* by original action, and by writ of error the house of Lords, will have power to determine, (at least consequentially,) who has right to sit in this house, and who not.

And

And how consistent such a determination will be with your undeniable right, (acknowledged on all sides) of determining the elections of your members, exclusive of all other jurisdictions, I leave to Gentlemen to consider.

A learned person was pleased to object, that right is founded upon usage; and if this house had the sole right of judging in a case of this nature, where a single elector is wronged, doubtless there would be some precedent of relief given to such an injured person. But (says the Gentleman) there is no such precedent, and therefore it must follow, that this house has not the sole right of relieving in that case. I think I may safely deny his first proposition, as he applies it to the rights of this house, which (generally speaking) are not founded upon usage. Sir, the rights of Parliament are chiefly founded upon the nature and constitution of Parliaments. Usage is indeed a corroboration, and an evidence of those rights; but the foundation of them, is our being a part of the legislature, whereby we necessarily become invested with such rights and privileges, as enable us to act, and to discharge our duty in that great capacity: So that it is not so much what has been used, as what is necessary to the support of our constitution, that must be the rule and measure in determining the rights of the house of Commons.

But neither has usage been wanting in this case: For whereas the Gentleman asserts, that there is no precedent where this house has given relief to a wronged elector, (with submission,) several such precedents appear upon your books, particularly in the case of *Banbury*, where four or five of the inhabitants complained, and the house gave a remedy. And I cannot see why, if it has been given to four, it may not be given to one; nay, I should think if more than one have been relieved, a *fortiori* one should be relievable.

But



But it seems to me, that the argument drawn from usage, goes much further than the learned Gentleman intended it should, for if all right be founded upon usage, all right of action must be so founded; and then what becomes of this action which the Gentleman has laboured to support? If usage be nothing else but the repetition of the like acts, then this action (according to the Gentleman's rule, that usage is the foundation of right,) cannot be rightful, unless there hath been a repetition of the like action.

Nor can it be said, that this is the first time any such cause of action has arisen, and that therefore it could not have been brought before; for there has scarce been a Parliament called in any reign, but some or other has, without doubt, been wrongfully refused his vote: So that the cause having been frequent, it must have had the like effect ever now, in case such a wrong could have been redressed by bringing such an action.

But no Gentleman has pretended to say, that any action of this nature was ever brought before; and therefore we may infer from the learned Gentleman's own position, as likewise from the authority of *Lit-leton's* text, that since none has been brought, none can be brought. And this has been the constant opinion of the courts in *Westminster-hall*, the Judges having, upon every occasion, where the rights of Parliament have fallen under their consideration, in all times declared, that nothing of that kind is within their jurisdiction; Nor can they judge of any such matter, farther than as they are impowered by particular statutes.

And this was the reason why the Judgment in *Barnardiston's* case, given in the *Queen's-Bench*, was reversed in the Exchequer Chamber, because it was a thing purely of parliamentary cognizance; the house of Commons having the sole power of determining all matters relating to elections and returns,

turns, except in statute cases. Nay, the court of *King's-Bench* had declared, they would not have proceeded in that action of *Barnardiston*, had it not been grounded upon a precedent judgment given in the house of Commons. But the Judges in the Exchequer Chamber thought, that even the determination of the house was not a sufficient authority to the courts below, to hold plea in an action relating to the rights of Parliament, tho' the action was grounded upon that determination; and therefore they reversed the judgment given in that action, and (which is a mighty strong circumstance in that case) that reversal was afterwards affirmed in the house of Lords. So that it is plain, even the Lords themselves were, at that time, of the same opinion of the Judges, that nothing which concerned elections was cognizable in *Westminster-Hall*: For otherwise they could not have affirmed the judgment given in the Exchequer Chamber, which was grounded intirely upon the maxim.

This appears farther, by what their Lordships did in the case of *Hollis* and *Elliot*, against whom judgment had been given in the *King's-Bench*, for what they had said and done in this house. In the year 1667, the house of Commons voted, that the judgment given in the *King's-Bench* against those persons, was illegal, as being against the privilege of parliament. And this vote was (as I remember) delivered to the Lords at a conference, with a desire of their concurrence to it: Accordingly, the Lords sent a message, that they did concur. Nay, they were so zealous, as to desire the Lord *Hollis* to bring a writ of error upon that judgment, which was done, and the judgment was reversed. From whence it must be inferred, that their Lordships were then of opinion, that whatever judgment is against the privilege of Parliament (that is, of either house of Parliament,) is an illegal judgment.

Now

Now to lay these two opinions of the Lords together: If the house of Commons has the sole privilege of judging all matters relating to elections, (upon which ground their Lordships affirmed the reversal of the judgment in *Barnardiston's* case) and if every judgment given against the privilege of Parliament be illegal (as their Lordships both resolved, and judged in the case of *Hollis* and *Elliot*,) how comes it to pass, that the Lords have lately thought fit to reverse the judgment given in this case of *Ashby* and *White*, which was grounded upon that very opinion, established by their Lordships in the case of *Barnardiston*, that all matters concerning elections are determinable only in the house of Commons? And consequently, how can we avoid saying, (pursuant to the other opinion, and to the judgment they gave in the case of *Hollis*) that their Lordships judgment of reversal given upon the writ of error in *Ashby's* case, being against what themselves have owned to be the privilege of the house of Commons, is an erroneous, (not to say an illegal) judgment?

I confess I cannot much wonder at its being so, when I consider, that the steps their Lordships made in proceeding to this judgment of reversal, were so very hasty, as not to afford them sufficient time to weigh and to deliberate upon a matter of such importance. This cause had depended near a twelvemonth in the *King's-Bench*, it had been argued several times at the bar, and at length *Seriatim* by the Justices, three of whom, upon the reason of former resolutions, gave judgment against the plaintiff, that the action does not lie: And yet no sooner was this writ of error brought, but the errors are immediately argued; and upon the first argument, the opinion of the Judges are required; and notwithstanding they desired time but till the next day to consider of the case, the Lords (as I am very well assured) would not allow them an hour; but obliged them to deliver their present thoughts, which tho' several of

of them expressed very doubtfully, and several others were for affirming the judgment; yet their Lordships were so very clear, and so determinate in the point, that, without any farther consideration, the judgment was reversed.

And now I desire Gentlemen to judge, whether, in this instance the Lords have shewn that regard either to the privileges, or to the dignity of this house, which their ancestors, and themselves, had formerly expressed upon the occasions before mentioned.

I will take notice but of one thing more, which fell from a learned Gentleman, who insisted, that the election to Parliament is not a service, but a privilege, because double damages are given by the late act concerning returns. I have cast my eye upon that act, and I think, if the preamble be read, it will appear, that Gentleman was somewhat unfortunate in appealing to it; for the preamble calls the election to Parliament, a service, in express terms, and certainly with good reason, if the house will give me leave I will read it.

‘Whereas false and double returns, of members to serve in Parliament, are an abuse of trust in a matter of the greatest consequence to the kingdom, and not only an injury to the persons duly chosen, by keeping them from their service in the house of Commons, and putting them to great expence to make their elections appear; but also to the counties, cities, boroughs, and cinque-ports by which they are chosen, and the business of Parliament disturbed and delayed thereby; be it therefore enacted,—

Sir, not to trouble you any longer, I am intirely for the question, as it is stated.

THAT which calls me up, in the first place, is what that honourable Gentleman, just against me, was pleased to intimate, as if the right of electing was only a service, and not a liberty, or privilege; and I find a worthy member, that spoke last, is of the

*Mr. King,*  
(afterwards  
*Lord King,*  
and *Lord*  
*Chancellor.*)



the same opinion. Truly, I am loth to tell you my own, without desiring the act 25 *Car. II. 9 cap.* may be read.

*Members.* No, no.

*Mr. King.*

'Tis an act to enable the county palatine of *Durham* to send members to Parliament, and it recites, that they had not, before that time, had the liberty and privilege of electing and sending any members to Parliament: Where you see the legislature call it a liberty and privilege; and if the legislature call it so, I think I may venture to call it so too. And if it be a liberty and privilege, then the question will be, whether it does not stand on the same bottom with our liberties and privileges? In case of any other franchise or liberty, an action lies at common law for the breach thereof; and why an action should not lie at common law for the breach of this franchise, as well as for the breach of every other franchise, is to me, very strange. Gentlemen, take it for granted, this is purely an action at common law, and no statute hath any influence on it. Now there is a statute which hath not been mentioned, (only I must first premise that which, I think, no body will deny, *viz.* That wherever an act of Parliament does forbid any thing, if any body be injured by the doing of the thing so prohibited by that act, in consequence of law, the person injured hath an action) I say, there is a statute that forbids disturbances or hinderances in matters of elections; and by consequence of law, the statute gives an action to the party injured, against the person disturbing or hindering him in his election. The statute I mean is the 3 *Ed. I. 5 cap.* that is a positive law whereby all disturbances in elections are forbid: Every man is forbid to hinder or disturb by force or arms, by malice, or menacing any man, to make a free election.

I shall only instance in one parallel case, tho' I could in many more, the statute in *Rich. II's* time,

*de*

*de scandalis magnatum*, only forbids the speaking evil of great men ; there is not one word of an action ; yet, by operation of law, it was always held, that an action would lie upon that statute for a scandal of a great man, because it was prohibited by that statute. So here, the statute forbids the disturbing of any man by force or malice to make free election ; the Jury have found, that the defendants did, in this cause, maliciously disturb and hinder the plaintiff from voting at the election ; and by a like consequence and operation of law ; this action is maintainable.

Gentlemen say, this is a new action never heard of before : It is true, this particular action was never brought before, but actions of the same kind and nature, and grounded on the same principles and reasons of law, have been brought before. *Et ubi eadem est ratio idem jus*. I could give you many instances of this kind. Was it ever heard, 'till the 20th or 21 *Car. II.* that an action lay against an Officer, for denying a poll to one who stood candidate for a bridge-master ? The Mayor denied the poll, and said, he was judge of the election : And upon this the person injured brought his action and recovered. At the same time it was said, there was no such action heard of before ; 'tis true, not that species, but the genus was heard of. Another action was brought 30 *Car. II.* (which was never heard of before) against a Mayor, for refusing the plaintiff's vote for a succeeding Mayor.

I believe every body knows, that all the law books for 400 Years say, that the reversioner has liberty to go into an estate of a tenant for life, to see if he commit waste. And no action was ever brought till 16 *Jas. I.* by a reversioner against a tenant for life, for refusing to let him in to see whether waste was committed. No action was ever brought against a master of a ship, for the negligent

keeping, and loss of goods on board his ship, till about the 24 *Car.* II. and yet the action lay.

There was another action, in *K. Car.* Ist's time, brought for a false and malicious prosecution of an indictment of a man for treason. There was the same objection; and it was said, that this would deter people from prosecuting. And no body ever dreamt of it before, 'tis true, but it stood upon the general reason of the law; if you do me a wrong, I must have a remedy. And as to what a worthy Gentleman hath said, that there are instances at common law, where a man shall recover, and yet have no damages; 'tis true in real actions, but let him give me an instance of that in an action of the case. He recovers nothing there; if he does not recover damages in real actions, he recovers the land itself.

*Members.* The question, the question.

*Mr. King.* I find Gentlemen are very uneasy, I will trouble you no further.

*Members.* Go on, go on.

*Mr. King.* I agree, the determining the right of election belongs to the house of Commons; and they ought to apply to the house of Commons in that case: And I shall not depart from that, I think I cannot, without ruining the constitution; but that which I say is, that this action does not at all relate to the right of election. This action is brought by a man that hath an undoubted right of voting, against an Officer for maliciously refusing his vote. Put the case this had happened in a county, (for the law would have been the same) that a freeholder, who had a right to vote, had tendered his vote to the Sheriff; and tho' he knew he was a freeholder, yet the Sheriff should maliciously refuse his vote; hath the Sheriff done this man an injury, or no? This man does not bring his action, because the person he would have voted for is not returned, but 'tis because there is an injury done to his franchise. If I thought

thought the right of election was concerned in this case, I would go as far as any, for I think that does belong to the house; but I do not think this is concerned in the present case.

I SHALL be shorter than some imagine. It has been discoursed, whether this be a privilege, or a burden, &c. Let them think it a burden that call it so: If it be a burden 'tis such a burden as some men spend a great part of their estate for, as if it was a privilege. I think this resolution which is proposed, tends to the encouraging one man to injure another man's franchise without any reparation, which I believe is not very consistent with law or reason. You have no doubt, a power of punishing the offenders, but you cannot give damages: I think this is a plain case; here was a man who had a right to vote, and was not admitted.

Sir Thomas  
Littleton.

*Members.* No, no.

That is admitted upon the judgment: For the case is made upon the right; and if he had not proved his right, he could not have recovered: Then if he was denied his right, no body will say, we can give him damages. What would you have a poor man do, come with a petition, and see council, and attend the Parliament for a month together? The man it seems thought it better to go this way. I think if he had complained, we might have punished the Officer, but for damages, he could have them no way but this.

Sir Thomas  
Littleton.

Suppose the Judges in *Westminster-hall* had been of opinion, that this action did lie, and the constables had brought a writ of error; what would you have said in a case where a man had been denied his privilege of voting, and the law had given damages, if the Lords had said no, there shall be no action? I think the Lords have done what is right, I think they have relieved the person injured according to justice; and it does not interfere with your rights, for he founds his action upon your determination.



*Members.* No, no.

*Mr. Wal-*  
*pole.*

Mr. *Freeman*, I desire to have the question read.

Accordingly Mr. *Freeman* in the chair read the question again.

*Mr Serjeant*  
*Hooper.*

A GENTLEMAN that spoke last but one, was pleased to say, that if he thought the right of electing Members was any ways concerned in this question, he would come heartily into it; I know not what that gentleman means by it; but believe all future elections will depend much upon the determination you make now. If you give the Lords this jurisdiction, to take cognizance of matters relating to elections, we must come to them to know whether we have a right to sit here. One gentleman said, he could not tell whether the sitting here was a burden, or a privilege: I believe it is a privilege to some, who by sitting here obtain a good place; but I think as to others, it may be looked upon as a great burden, to come up and spend a great deal of money for the publick service; and all the privilege that I know they have, is, to protect their estates, and serve their country.

There is no extravagant thing but may be brought into the house of Lords, if you countenance them in the jurisdiction they have now taken upon them. Any action whatsoever, let it belong to any temporal jurisdiction, may be there determined. I will still suppose, notwithstanding what is objected against the Judges, that they will do their duty; but *Westminster-hall* is now no barrier; for whatever is there determined, may be brought by writ of error into the house of Lords, and they will determine it as they think fit. In the case of *Soame* and *Barnardiston*, the law was taken to be, that *Westminster-hall* had not a right to intermeddle in these matters. What then hath since altered the law, unless the Lords have the legislative power in them?

them? And that I dare say they will have, if you allow this.

This I must take notice of from the report now before you, that here is a step made, which if it had been made in another jurisdiction, I should have given a hard name to it.

I think, in the first place, the party should be brought in by the Queen's process. When errors are to be assigned, there uses to go out a *Scire Facias*, which is the Queen's writ; but here is only an order made, and for what? That the party shall join issue upon the writ of error. Suppose there had been a release of errors, must he have joined issue upon the errors? And yet it is here so ordered before the party is heard. I say, if they have a jurisdiction, the party ought to be called in by *Scire Facias*: And no Judge, or Judicature, can grant execution, or process, but it must be in the Queen's name. As for your question, I come heartily into it.

Mr. *Freeman*, I think this question depends upon two parts, and I believe it the best way to divide your question. One part of it concerns the rights and liberties of this house, and I think every body will come up to it: And as I would not lessen the privileges that belong to the house of Commons, so I would not lessen any privilege of the Commons of *England*, whom we here represent. As one are the privileges of this house, so the other concerns the liberties of the people of *England*, who can't otherwise come to a remedy when they are abused in this manner. The gentleman that called it a hard service, if he would tell his country so, I believe he might be excused, and they would send another in his room.

I WILL trouble you very little at this time: I think the point of learning and law hath been so well spoken to, by those learned gentlemen that have been against the question, that if I was able, I should say nothing more to that. But I think the question

Sir *William Strickland*.

Mr. *Walpole*, (afterwards Sir *Robert*, and Chancellor of the *Exchequer*.)

on as it is going to be put, is not right; for as the question stands, tho' I can't give my negative to one part, I think 'tis impossible to give my affirmative to the other. The matter before you comes to this single question, whether you will encourage, and give a power to an officer, be he whom he will, to act arbitrarily; or rather chuse in such a case, to do something in favour of the electors? I am sure if I desire to be elected by those that had the right, I would never give the officer an authority to the prejudice of the electors. Where you come to say, that the sole judging of the qualification of the electors belongs to the house of Commons only, those, I apprehend, are words of too large extent and ill consequence. Suppose there was an action brought upon the last act of Parliament, for a false or double return.

Mr. Freeman.  
Mr. Walpole.

THERE is an exception in the question as to that. I KNOW there is; but suppose an action is brought upon that statute, the officer may have proceeded with the greatest impartiality, may have taken the poll with the greatest exactness and justice, and there may appear to be an equal number of votes for each candidate, whereupon he makes a double return, and this brings it to be determined by the Committee of elections, and they vote one of them duly elected. This gentleman that had the favour of the Committee (tho' afterwards possibly it might be made appear, that by bribery or corruption, and at a great expence, he procured himself to be elected) after you have voted him duly elected, he hath nothing to do but to try his action, and see if he can make his double damages amount to his expences. The first thing he is to do, is to produce the vote of the house of Commons, that declared him duly elected, contrary, perhaps, to the last determination in Parliament, which in every place, is to be the guide to the returning officer. But shall there then be given in evidence no qualification of the electors? Nothing  
to

to prove that the persons admitted to vote were qualified according to such last determination? Or shall that vote of the house of Commons, that was intended only to bring him into this house, recover him 5 or 600 *l.* damages? I take it to be so as the law stands. Now it ought to be seen who hath the greater number of legal votes, and whether duly qualified; and in that case you must suffer the matter again to be tried by the court, and you do, in some measure, make them judges of the qualifications of the electors; if it were otherwise, they could not inquire into the majority of legal votes.

What happens in the case of a Mayor, may be in the case of a Sheriff: If a Mayor or a Constable may deny a man his vote, that hath an uncontroverted right in a Corporation, a Sheriff may refuse a Freeholder, and strike off enough to make a majority for whom he pleases. You had once the case before you, whether a Sheriff could refuse a scrutiny, and one or two gentlemen would have given that power to a Sheriff; but a learned gentleman thought it a dangerous question, and he desired to come to the merits of the election; and that was determined, and you voted the worthy member duly elected, and thought it a dangerous thing to determine whether the officer had that power one way or another? I think that part of the question, which concerns the qualification of the electors ought to be left out.

Mr. *Freeman*. I will read the question, (*which he did.*)

SIR, I think it is a constant rule, where a question is complicated, 'tis the right of every member, if he desire it, to have the question divided, and I think it regular to do it by an amendment; and therefore I second that worthy gentleman, that you would leave out those words that relate to the qualification of the electors.

MY LORD is undoubtedly right in what he desires; that if there be any words in the question to

Marquis of  
Hartington.

Mr. Solicitor  
General.



which gentlemen have a dislike, that question is not to be put; but only, whether those words shall stand part of the question: Therefore if those words of the qualification of the electors do give offence, it must be put, whether they shall stand part of the question? But I hope at the same time gentlemen will apprehend, that leaving out those words, leaves out all you debated on.

Sir Christopher  
Muster.  
grave.

NO DOUBT if any question is complicated, gentlemen do not know how to give an affirmative or a negative, and you must divide it: But I hope gentlemen will consider the latter part of the question is the main thing whereon you have debated; for if you do not assert that you have the power of determining the qualifications of the electors, you give up the right of the Commons of *England*: I do agree that the question may be divided.

Mr. Freeman.

THAT which is debated now is, whether these words shall stand part of the question.

Sir Thomas  
Meres.  
Mr. Freeman.

SIR, I think the question ought to be divided.

THE question, as I have it upon my paper, is this.

That according to the known law and usage of Parliament, neither the qualification of any elector, or the right of any person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except, in such cases as are specially provided for by act of Parliament.

But some gentlemen are for leaving out these words ("neither the qualification of any elector, or") so that I must put a question, whether these words shall stand part of the question?

Members. Aye, aye.

Then Mr. *Freeman* put the question, and the Committee divided.

Teller for the Aye's, Mr. *Gulston* — — 215

Teller for the No's, Mr. *Wylde* — — 97

So it was carried, that those words should stand part of the question.

And

And the main question being put,

*Resolved,*

2. That according to the known law and usage of Parliament, neither the qualification of any elector, or the right of any person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such cases as are specially provided for by act of Parliament.

*Resolved,*

3. That the examining and determining the qualification or right of any elector, or any person elected to serve in Parliament, in any court of law, or elsewhere than before the Commons of *England* in Parliament assembled, except in such cases as are specially provided for by act of Parliament, will expose all Mayors, Bailiffs, and other Officers, who are obliged to take the poll, and make a return thereupon, to multiplicity of actions, vexatious suits, and unsupportable expences, and will subject them to different and independent jurisdictions, and inconsistent determinations in the same case, without relief.

*Resolved,*

4. That *Matthew Ashby*, having in contempt of the jurisdiction of this house, commenced and prosecuted an action at common law against *William White*, and others, the Constables of *Aylsbury*, for not receiving his vote at an election of Burgesses to serve in Parliament for the said borough of *Aylsbury*, is guilty of a breach of the privilege of this house.

*Resolved,*

5. That whoever shall presume to commence or prosecute any action, indictment, or information at common law, which shall bring the right of electors, or persons elected to serve in Parliament, to the determination of any other jurisdiction than that of the house of Commons, except in cases specially provided

provided for by act of Parliament, such person and persons, and all Attornies, Solicitors, Counsellors, Serjeants at Law, soliciting, prosecuting, or pleading in any such case, are guilty of a high breach of the privilege of this house.

*Ordered,*

The said resolutions to be fixed up on *Westminster-hall-gate*, signed by the Clerk.

These resolutions, with this (to wit,

*Resolved,*

1. That according to the known laws and usage of Parliament, it is the sole right of the Commons of *England* in Parliament assembled, except in cases otherwise provided for by act of Parliament, to examine and determine all matters relating to the right of elections of their own members)

Before passed in the Committee, were reported to the house.

*Mercurii 26 Januarii, 1703.*

Mr. *Freeman* reported the five resolutions agreed to by the Committee; the first resolution was not opposed, but after the second resolution (*viz.*

That according to the known law and usage of Parliament, neither the qualification of any elector, or the right of any person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such cases as are specially provided for by act of Parliament)

Was read the second time by the Clerk, the question (according to order) being proposed to agree with the Committee in that resolution, the Marquis of *Hartington* stood up in his place, and spoke to this effect.

Marquis of  
*Hartington.*

I DO not expect the house will be of a different opinion from the Committee; but I think it is my duty, when I apprehend what you are doing will be of

of ill consequence to the constitution, to give my dissent in every step. I think it will be dangerous to the very being of this house: If this maxim had been allowed formerly, I think there would have been no need of taking away of charters, and of *Quo Warranto's*; by the influence of officers they might have filled this house, with what members they had pleased, and then they could have voted themselves duly elected.

MR. SPEAKER, I cannot agree to this resolution: I think it deprives the people of *England* of their birthright: For they who have freeholds in any of your counties, or freedoms in any corporation, have as much right to vote in elections to Parliament, as they have to their estates. And if any gentleman would subject them to such arbitrary proceedings, that a Sheriff or any other officer may deny them this privilege, give me liberty to say, I must be always against any such thing; for tho' you can punish the officer, you cannot give any satisfaction to him that receives the injury.

SIR, I do not rise up to trouble you long, but to speak to one point that was mentioned by a noble Lord over the way. I shall be as tender as any man alive, of doing any thing against the liberty of the people; but I am for this, because I take it to be the greatest security for their liberty. The noble Lord was pleased to take notice, that in the consequence, the crown would have a great influence on those that are to return the members of the house of Commons; and when they were in, they might vote for one another. I cannot think that the liberties of the people of *England* are safer in any hands below, or that the influence of the crown will be stronger here than in other courts.

I THINK that gentleman hath not answered what I said. I shall never have any suspicion of any that sit in the house now; but when those that

Sir William  
Strickland.

Mr. St.  
John.

Marquis of  
Hartington.



that have no right are returned, and make a majority, I think it will not be safe.

Mr. Ward.

I do not apprehend that consequence from this resolution. I think if it was so, this should have been offered before the first resolution was passed, which hath passed in the house and committee *nemine contradicente*; for you cannot determine the right of any members sitting here, without determining the right of the electors.

Mr.  
Lowndes.

I cannot but think it will be harder to influence this house to get an ill vote, than it will be in another place: However, if I am a freeholder, and have a right to vote in a county; or a freeman, and have a right to vote in a borough, by admitting persons to vote that have no right, it may be as much prejudice to me, for that may make my vote signify nothing: And there is as much injury one way as the other. If all the people of *England*, who have a vote, should go together by the ears in *Westminster-hall*, and dispute there who has a right to vote, and who not, I believe the Judges of the common law, and noble Peers of the other house, would be glad, in a little time, to restore the right where it is, it would breed so much confusion. If gentlemen are not satisfied already, they may easily be so, that there is no defect of power in this house, but they have a power to do justice in all cases of elections; and I hope every body will take care, not only to maintain the rights of the people that sent them hither, but the trust lodged in them, which they cannot depart from by the rules of justice.

Then the second, with the other three resolutions passed in the Committee, were agreed to by the house without a division, with this amendment only, of leaving out (*at common law*) in the fifth resolution.

But the house, though they voted *Abby* guilty of a breach of privilege, in commencing and prosecuting the said action, yet there having been no declaration

claration of the house in that case before, they made no order for taking him into custody, as usual in cases of breach of privilege.

Upon these proceedings of the house of Commons, the house of Lords appointed a Committee, who drew up *The state of the case upon the writ of error* in their house; which is as followeth.

*THE Report of the Lords Committees appointed to draw up, The state of the case upon the writ of ERROR, lately depending in the house of Peers; wherein, MATTHEW ASHBY was Plaintiff, and WILLIAM WHITE, and others, Defendants. With the resolution of the house of Peers, relating thereunto. \**

*ASHBY against WHITE, & al<sup>†</sup>.*

**T**HE Plaintiff in this action declares, that the 26th of December, in the 12th year of King William the third, a writ issued out of Chancery, directed to the Sheriff of Bucks, reciting, That the King had ordered a Parliament to be held at *Westminster*, on the 6th of February following: The writ commanded the Sheriff to cause to be elected for the county, two Knights; for every city, two Citizens; and for every borough, two Burgeffes; which

\* *Die Lunæ, 27 Martii, 1704.* it is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the report made from the Committees appointed to draw up the state of the case upon the writ of Error, lately depending in this house; wherein, *Matthew Ashby* was Plaintiff, and *William White*, and others, Defendants, and the resolutions made this day relating thereunto, shall be forthwith printed and published.

MATTHEW JOHNSON,  
Cleric' Parliamentor'.

† *Salkeld's Reports*, fol. 19. in case.

writ

writ was delivered to the Sheriff, who made a precept in writing, under the seal of his office, directed to the constables of the borough of *Ailesbury*, commanding them to cause two burgessees of the said borough to be elected, &c. which precept was delivered to the defendants, to whom it did belong to execute the same. By vertue of which writ and precept, the Burgessees of the borough, being summoned, did assemble before the defendants, to elect two Burgessees; and they being so assembled, in order to make such election, the Plaintiff being then a Burgess, and inhabitant of that borough, being duly qualified to give his vote at that election, was there ready, and offered his vote to the defendants, for the choice of Sir *Thomas Lee* Bart. and *Simon Mayne* Esq; and the defendants were then required to receive and admit of his vote.

The Defendants being not ignorant of the premises, but contriving, and fraudulently and maliciously intending to damnify the Plaintiff, and to defeat him of that his privilege, did hinder him from giving his vote; so that the two Burgessees were elected without any vote given by the Plaintiff, to his damage, &c. upon not guilty pleaded, the case went down to trial, and a verdict was given for the Plaintiff, and five pounds damages, and also costs.

It was moved in the court of *King's-Bench* in arrest of judgment, that this action did not lie, and that point was argued by council, and afterwards by the court.

The Lord Chief Justice *Holt* was of opinion, that judgment in this case ought to be given for the Plaintiff; but Mr. Justice *Powel*, Mr. Justice *Powis*, and Mr. Justice *Gold* being of a different opinion, judgment was entered for the defendant: Whereupon the Plaintiff brought a writ of error in Parliament; and the cause being argued at the bar of the house of Lords by council, and ten of the judges, who were present in the house, being heard, and the mat-

ter

ter fully debated by the Lords, § the house was of opinion, that the judgment given in the *King's-Bench* was erroneous, and that the Plaintiff had a good cause of action, and ought to have judgment.

To maintain this opinion, these three positions were laid down.

### I. That

§ The CASE of *William White, Richard Talboys, William Bell, and Richard Heydon*, constables of the town of *Ailesbury*, in the county of *Bucks*, in the year 1700. In a writ of Error brought in the house of Lords by *Matthew Ashby*, upon a judgment given for the constables against him in the court of *Queen's Bench*, last *Michaelmas* term, as drawn up by their council, and presented to the house.

The Plaintiff *Ashby* being a poor indigent person, and coming to settle in *Ailesbury*, the overseers of the poor there warned him out of the parish, unless he would give security to save the parish harmless, and to that purpose complained to the next Justices of the peace, to get an order to remove him; whilst this matter was in controversy, the election for Burgesses of Parliament came on, and the said *Ashby* offering himself to be polled, the constables (now the defendants) refused to receive him to poll, being (in their opinions) no settled inhabitant there, nor did he ever contribute to the church or poor, either before or since the election. After the election was over, the said *Ashby* brought his action on the case against the constables, wherein he sets forth, that he had right to vote for burgesses there, and that at that election he offered to poll for Sir *Thomas Lee*, and Mr. *Mayne*, and that the constables refused to receive his poll, to his damage of 200 l.

The constables pleaded not guilty, and thereupon a trial was had at the assizes at *Bucks*, and *Ashby* got a verdict against them and had five pounds damages given.

Whereupon according to the constant course of that and all other courts, it was moved in arrest of judgment in the *Queen's-Bench*, where the action was brought; that notwithstanding the verdict which only found the fact, yet no such action did by law lie against the defendants; and after several arguments at the bar, and at last at the bench, three Judges (against the Chief Justice) held, that the action did not lie, and so judgment was given for the constables.

And now the Plaintiff *Ashby* hath brought a writ of Error in Parliament.

The



I. That the Plaintiff, as a burgefs of this borough, had a legal right to give his vote for the election of Parliament Burgeffes.

II. That, as a neceffary confequence thereof, and an incident infeparable to that right, he muft have a remedy to affert and maintain it.

III. That

The Defendants conceive the Judgment in the *Queen's-Bench* well warranted by law.

1. No fuch action hath ever been brought, notwithstanding the many elections that have been controverted every new Parliament; whereby it is evident, that it hath been the constant opinion of all Lawyers, and others, in all ages, that fuch action would not lie.

2. Several acts of Parliament have been made to give remedy by actions in *Westminster-hall*, in fome particular cafes of elections to Parliament, which fhew there was no remedy at common law in thofe courts.

3. There never were but three actions upon the cafe brought by candidates for falfe returns, viz. *Nevill's* cafe in the late times, and *Sir Samael Barnardifon's* cafe, and *Onflow's* cafe in the time of King *Charles* the fecond; in all which cafes the defendants prevailed upon the point of law, viz. that fuch action would not lie. And if fuch action does not lie for one elected, much lefs will it lie for an elector.

4. To fupport every action upon the cafe, there muft be damage *in prefenti*, or a poffibility of damage *in futuro*, which there cannot be in this cafe, unlefs it be prefumed, that, contrary to act of Parliament, the Plaintiff was to have money for his vote.

5. If there was *Damnum* (which there is not) yet it cannot be pretended there was *injuria*; and *damnum absque injuria*, is not fufficient to fupport an action upon the cafe. As at the common law; if the lawful patron prefented his clerk to the Bifhop, and he refufed to admit him, it is conceived, no action upon the cafe lay againft the Bifhop, but a *quare impedit*, in which at common law, no damages were given, which is a much ftronger cafe than this.

6. This is not to be compared to other cafes, where the party hath no remedy elfewhere than in *Westminster-hall*; for here the Plaintiff hath a proper remedy by applying to the houfe of Commons, although the election is not contefted by the candidates, and Parliamentary cafes are to be determined in Parliament: And therefore,

7. 'Tis conceived, that fince this matter concerns the election of members to ferve in Parliament, the courts of *Westminster-hall*

III. That is the proper remedy which the Plaintiff hath pursued, being supported by the grounds and principles of the ancient common law of *England*.

To make good the first position, that the Plaintiff has a legal right to give his vote at the election of burgeses for this borough, it was said, that it is well known, the House of Commons consists of Knights, Citizens, and Burgeses.

The Knights of Shires represent all the freeholders of the counties. Anciently, every the least freeholder had as much right to give his suffrage, as the greatest owner of lands in the county. This right was a part of his freehold, and inherent in his person by reason thereof, and to which he had as good a title, as to receive the natural profits of his soil. This appears by the statute of 8 *H. VI. cap. 7.* which recites the great inconvenience which did

*ball* being not impowered by any act of Parliament in this case, have no cognizance in it, but the House of Commons have the determination of it: And this jurisdiction is confirmed to them by Parliament; for by the act 7 and 8 *Wil. III. cap. 7.* If any person shall return a member to serve in Parliament, contrary to the last determination in the House of Commons, of the right of election, in such place the return shall be adjudged a false return; by which 'tis evident, that the Commons are the only judges in all matters where the right of election may come in question, as it must of necessity do, in all cases where the question is, who are the electors.

8. If this action should prevail, the chief Magistrates, in all places where elections are made, would be in a miserable condition upon every new Parliament, by reason of a multitude of actions, which probably would be brought against them upon all contested elections, and by the different judgments that possibly may be given in the House of Commons, and in *Westminster-hall*, touching the same election.

9. The laying it to be done *falso & malitiose* (which are grown to be almost words of course in actions on the case) cannot give a jurisdiction where it was not before; and if those words shall be sufficient by being annexed to a man's intention, almost all a man's actions may be brought into *Westminster-hall* by those words, and subjected to the power of a Jury.

*T. Powys, Con. Phipps.*

arise in the election of Knights of the shires, by men that were of small substance, who pretended to have an equal right with Knights and Esquires of the same county, therefore that right was abridged, and confined only to such freeholders as had forty shillings *per Annum*. But thereby it appears, that the right which a freeholder hath to vote in the election for Knights of the shire, is an original and fundamental right belonging to him as he is a freeholder.

The second and third sort of men, which compose the great representation of the people of *England*, are Citizens and Burgeſſes, who, though they differ in name, yet are in essence and substance the same, for every city is a borough, and, as such, sends members to Parliament.

There are two sorts of boroughs, the one more ancient, the other more modern.

Of the first sort are the most ancient towns of *England*, whose lands are held in burgage, and by reason thereof had the right and privilege annexed to their estates, of sending burgeſſes to Parliament. The second sort are those cities and boroughs that have a right by prescription, time immemorial, or by charter, within time of memory, to chuse burgeſſes for Parliament; both these are upon several foundations, the one as belonging to their burgages, the other as belonging to their corporations; the first is a real right belonging to their houses and lands, the other is a personal right belonging to their body politick.

As for the first, it is sufficiently described in *Lilston's* tenures, *Sett.* 162, 163, 164. A tenure in burgage is a tenure in socage, and is called a tenure in burgage, because these are the most ancient towns in *England*, and from thence came the burgeſſes to Parliament, and they who have this privilege, have it as belonging to their estates or possessions.

The other right of chusing Parliament burgesſes, is not annexed to any freehold or eſtate in poſſeſſion, but veſted in the corporation of the place, and is created in this manner, *viz.*

When a town was incorporated, a grant was either then, or after made to the body politick, that they ſhall have two burgesſes for Parliament, to be choſen either by all the freemen and inhabitants of the place, or ſuch a ſelected number as is preſcribed by the charter.

The inheritance of this privilege is in the whole corporation aggregate, but the benefit, poſſeſſion, and exerciſe is in the perſons of thoſe, who by the conſtitutions of thoſe charters, are appointed to elect.

And in all caſes, where a corporation hath ſuch a privilege, the members thereof in their private capacity, have the benefit and enjoyment thereof, becauſe the corporation, as ſuch, is not to be repreſented: For it is not neceſſary that it ſhould have any eſtate, but by being a corporation, they have only a capacity to have eſtates. *Jones 165. Hyward and Fulcher.* For as the citizens and freemen of a place are incorporated for the better government of thoſe of the place, ſo is this privilege of having burgesſes given for the advantage of the particular members thereof, whoſe eſtates are to be bound by the acts of their repreſentatives.

And therefore the wages of citizens and burgesſes were always levied, not upon the eſtates or goods of the corporation, but upon the goods and eſtates of the members thereof.\*

It appears by other inſtances, that it is uſual and proper for corporations to have intereſts granted to them, which enure to the advantage of the members in their private capacities. *Moore 832. Sir Thomas Waller verſus Hanger.* The King granted to the Mayor and citizens of *London*, that no priſage be taken and paid for wines of the citizens and freemen

\* 46. Ed. III. M. 4. dorſo. &c.



of *London*. This enures to the benefit of every citizen and freeman of *London* for his own wines, in which the corporation of the city hath no interest.

But there is no such notion in the law of *England*, as a right without a remedy.

The same thing appears by the case of *Waller* and *Spateman*, 1 *Saund.* 343. and by the case of *Meller* and *Walker*. These instances make it sufficiently appear, that though the inheritance of this franchise, be in the body corporate, yet it is for the benefit of the particular members thereof: And it is certainly a great advantage for the men or inhabitants of a place to chuse persons to represent them in Parliament, who thereby will have an opportunity, and be under an obligation to represent their grievances, and advance their profit.

Of this opinion have two Parliaments been, as appears by two several acts, the one 34 & 35 *H. VIII. cap.* 13. the other 25 *Car. II. cap.* 9. The first is an act for making Knights and Burgeses within the county and city of *Chester*, which begins in this manner, *In humble wise shew to your Majesty, the inhabitants of your Grace's county palatine of Chester, that they being excluded and separated from your high court of Parliament, to have any burgeses within the said court, by reason whereof, the inhabitants have hitherto sustained manifold losses and damages, as well in their lands as goods and bodies:* Therefore it was enacted, that they should have Knights for the county, and citizens for the city of *Chester*: The other act, which constitutes Knights and Burgeses for the county palatine, and city of *Durham*, recites, *That the inhabitants thereof hitherto had not the liberty and privilege, of electing and sending Knights and Burgeses to the high court of Parliament.*

The application of these two acts is very plain; the first saith, to be excluded from sending Knights and Burgeses to Parliament, is a damage to lands, goods,

*goods, and body*; the other saith, that it is *a liberty and privilege* to send them.

Thus the right of election is explained, and shewed to be a legal right.

That of electing Knights of shires, belonging to and inherent in the freehold.

The other, of electing burgessees, belongs in some cities and towns to the real estates of the inhabitants; and in others, is vested in the corporation, for the benefit of the particular members, who are the electors; the having of which is a great benefit and advantage to the people thereof, and will prevent great loise and damage that otherwise would ensue.

II. It follows, that in consequence of this right or privilege, the possessors thereof must have a legal remedy to assert and maintain it.

It was said, that there are many rights for which a man has no remedy by the common law, as in case of a legacy given, if it be not paid, the party cannot bring an action for it. This is very true, but not applicable to the present purpose; for the constitution of the *English* government has wisely distributed to several courts, the determination of proper causes, but has left no subject, in any case where he is injured, without his adequate remedy, if he will go to the right place for it; if a man will seek for a remedy at common law, for a legacy, which by our constitution is to be recovered in the ecclesiastical court, it is his own fault if he do not recover; as it would be, if he should begin a suit for land in the court of Admiralty, or go for equity to the Common Pleas.

He who loses or quits his remedy, loses his right: If a man has a bond for payment of one thousand pounds, he has no remedy to recover this money but by action: Therefore, if he releases all actions, he loses his right to the money, because he has given away the means to recover it, *Coke's 6th Rep.*

58. *Bredman's case*. If a man purchases an advowson, and at the next avoidance suffers an usurpation, and brings not the *quare impedit* in time, he hath lost all manner of remedy, and in consequence his right, to which neither he nor his heirs can ever be restored. Would it not look very strange in a constitution so formed, that the Commons of *England* have an undoubted share in the legislative authority, which is to be exercised by their representatives chosen by themselves, in which every freeholder, of forty shillings *per annum*, hath a right to vote for the county, every citizen for a city, and every burgess for a borough; That, if the Sheriff, or other Officer, who is to cause the election to be duly made, shall hinder or deprive any of those electors of his right, the person injured shall have no remedy, tho' the injury be done to such a right, upon the security whereof the lives, liberty, and property of all the people of *England* so much depend.

That the defendants, in this case, by hindering the plaintiff from voting, have done ill, cannot be denied; because they have excluded one who has a right from his vote. Then, if the law doth not allow an action to the party injured, it tolerates the injury, which is absurd to say is tolerable in any government.

There was much weight laid upon the case of *Ford and Hoskins*, 2 Cro. 388. Mo. 842. which is, that where, by the custom of the manor, every tenant for life might name his successor for his life, whom the Lord is to admit; if one be named, and the Lord refuses to admit him, it was held, an action on the case would not lie; because the *nominee* had no right without being admitted. But the reason given for that opinion, shews it has no relation to this case, for the plaintiff's right of voting is vested in him, without any previous admittance, therefore tho' it shall be law, that no action will lie for

for not giving a right, yet certainly an action must lie, for defrauding and hindering a man to enjoy a right that he hath.

When any statute requires an act to be done for the benefit of another, or to forbear the doing of an act, which may be to his injury, tho' no action be given in exprefs terms by that statute, for the omission or commission, the general rule of law, in all such cases, is, that the party injured shall have an action, *Coke 10. Rep. 75.* The case of the *Marshallsea*, 12 *Rep. 100. Co. Mag. Car. 118.* This is a maxim allowed and approved of in all ages.

There is the same reason where the common law gives a right, or prohibits doing a wrong: But in this case an act of Parliament is not wanting, for the statute of *West. 1. cap. 5.* enacts, *That elections shall be free*; if he who hath a right to vote be hindered by him who is to take his vote, or to manage the election, that election is not free, such an impediment is a manifest violation of that statute, as well as an injury to the party whose vote is refused. This statute of *West. 1.* shews what opinion the King and Parliament had, of the great consequence it was to the whole realm, that people should have their freedom in choice; and though the common law was the same before, as appears even by the statute it self, the words whereof are, *elections ought to be free*; yet it was judged necessary to add the sanction of an act of Parliament thereunto; *The King commandeth upon great forfeiture, that no great man, or other, by force of arms, or by malice, or menaces, shall disturb any to make free election.* The defendants did not, by force of arms, drive the plaintiff away from the election, nor by menaces deter him, but they did maliciously hinder him (so it is charged by the plaintiff in the declaration, and it is found by the Jury to be done by fraud and malice) and so the defendants are offenders within the very words of the statute of *West. 1.* where the law is so clear as to



the right, and the duty so strictly enjoined by act of Parliament to be observed, it seems a great presumption to make it but a light thing.

It being apparent that the plaintiff had a right, and that the defendants have done him wrong, and that by consequence of law he must have some remedy to vindicate his right, and to repair the wrong.

III. The third thing to be shewn is, that the remedy the plaintiff pursued by bringing this action, is the proper remedy allowed by the ancient law of *England*.

This action is that which is called in the law, an action upon the case; that is, founded upon the particular case of the party injured.

The law, in all cases of wrong and injury, hath provided proper and adequate remedies.

1. When a man is injured in his person, by being beaten or wounded, the law gives him an action of trespass, assault and battery; if by being imprisoned, an action of false imprisonment.

2. If his goods be taken away, or trespass done unto his house or lands, an action of trespass lies to repair him in damages.

3. If a man hath a franchise, and is hindered in the enjoyment thereof, the proper remedy is by an action upon the case.

The plaintiff in this case hath a privilege and a franchise, and the defendants have disturbed him in the enjoyment thereof, in the most essential part, which is his right of voting.

4. Where any Officer or Minister of justice, intrusted with the execution of the process of law, does an injury, an action of the case lies against him. If the Sheriff will not execute a writ by arresting the party-defendant, or taking his goods, the plaintiff shall have his action upon the case, because he refused to do his duty, to the plaintiff's damage.

The

The precept which the defendants received from the Sheriff in this case, was founded upon the King's writ: And the defendants are commanded, to cause two Burgeſſes to be elected for the borough of *Ailesbury*, of which they are to give notice, and to admit every one who hath a vote to make uſe of it; if they reſuſe any man to vote who hath a right, they act contrary to the duty of their office.

It was objected, that it did not appear that the perſons for whom the plaintiff voted, were elected, nor that they would have been elected if his vote had been admitted.

The answer is, that it is not material whether the perſon for whom the plaintiff voted was choſen, or would have been choſen, if his vote had been taken; his right and privilege is to give his ſuffrage, to be a party in the election; if he be excluded from it, he is wronged, though the perſons for whom he would have given his vote were elected.

The right of action muſt accrue upon the reſuſal of the vote and is never to be made better or worſe by the return, which is a matter *ex poſt facto*.

It was ſaid in the arguing this caſe, that the plaintiff had no damage; or at leaſt, that there was no ſuch injury or damage done to him as would ſupport an action.

The answer to that is, that the law will never imagine any ſuch thing as *injuria ſine damno*. Every injury imports damage in the nature of it. If a man pick a lock, and come into an houſe without the conſent of the owner, perhaps there is no pecuniary damage done to the value of a farthing; yet the owner ſhall have an action againſt him, and recover damages for the invaſion of his poſſeſſion and property. There are many caſes of the ſame nature, which have been determined upon this ground. In the caſe between *Starling* and *Turner*, 24 *Car. 2. in com. Ban.* (ſee *Ventris* firſt part, p. 206.) and afterwards in *Ban. Reg.* The plaintiff *Turner*, amongſt others,

others, stood to be one of the Bridge-Masters of *London-Bridge*, which Officer is to be elected by a common-hall of the city of *London*: The question was, who had the greatest number of voices. The plaintiff demanded the poll; and the defendant, being then Lord-Mayor of *London*, refused it: It was adjudged, that the action was maintainable for refusing the poll; because every candidate has a right to have it; and though perhaps if the poll had been granted to the plaintiff in that action, it might have been against him, yet the denial of that right was a good ground of action. Upon the same reason, the case 29 *Ed. III.* 18. was determined; and also the case of *Hunt and Dowman*, 2 *Car.* 478. 2 *Rolls* 21.

It is apparent by what has been said, that the plaintiff in this present case hath been injured, in being denied his right; and no good reason can be assigned that so affects this case, as to make it differ from other cases; though to that purpose several matters were urged and insisted upon. As first, that this would be the occasion of many actions.

If that be so, there is the greater reason to support this action, to punish the many wrongs that have been done, which will prevent any more of the like nature. If offences multiply, remedies against them ought to be advanced. If other Officers of boroughs have been, or shall be guilty of the like misfeasances, as these defendants have been, it is fit they should be liable, as these defendants are, to make satisfaction. If one man be beat and imprisoned, is it any objection against his having an action, because all others who shall be as ill treated as he hath been, shall have the like remedies? The only means to hinder corruptions, that will soon become frequent among those Officers of boroughs and corporations, is, to let them see that they are obnoxious to the law, and that their purses must make satisfaction to all whom they shall injure  
in

in this manner. It is true, if one act which tends to the injury of many persons be committed, no one person injured shall be allowed to have an action, because the rest might have the same. *Co. 5. Rep. 72. William's case, 3 Cr. 664. Pineux ver' Howenden*; as the case of not saying divine service, in a chapel of a manor, to the Lord and tenants; or for stopping of a lane or common-way, because the defendant, for one act, would have a multitude of suits against him, the injury alike affecting a multitude: But the refusal of every vote is a distinct act: The party grieved, whose vote was denied, can only bring an action for the refusal; the others whose votes were admitted are not concerned. And if an Officer denies an hundred, who have a right, these are a hundred several wrongs, for which he ought to be liable to as many several actions. As if a man will make it his business to sling stones, and shall hit a hundred several men, he must make satisfaction to them all: But surely this is so far from being an objection, that it is a strong argument to support the action: For if the Mayor or Bailiff of a borough shall have liberty to refuse men who have votes, he can easily make a majority to vote on his side; and then, what will become of elections? The Officer will return him that is elected by a majority of his own making, by excluding the votes of others that have right.

This would encourage Officers to be partial and corrupt, and to return divers persons elected in that manner, who at least must have possession of seats in the house of Commons for some time, and give voices in the making of laws, and imposing of taxes, until the right of election be determined. And though upon hearing the cause in the House of Commons this matter may be set right at last; yet, what can compensate for the mischief that may be done to the kingdom in the mean time, by the votes of those who shall be partially returned, and



and are not the representatives of the people of the place who are to chuse them.

Besides, the beforementioned rules against multiplying actions, is confined to such acts where there is another remedy to be had; but where there is no other remedy but an action, the wrong-doer must answer to so many several actions as there are persons injured. Suppose a man will plough up the ground in which a hundred persons have a common, he must answer all their actions. If the inhabitants of a town have a common watering-place, and a stranger stops the current, whereby the water is diverted, every inhabitant shall have his action, because there is no other remedy.

The injured Plaintiff, in this case, has no other remedy besides this action; no indictment lies, because it is a personal wrong to the party, and no wrong to the publick, but only in the consequence of it, as an evil example, which tends to the encouragement of other such officers to commit the like transgressions; nor is there any danger to an honest officer, that means to do his duty; for where there is a real doubt touching the parties right of voting, and the officer makes use of the best means to be informed; and it is plain his mistake arose from the difficulty of the case, and not from any malicious or partial design, no Jury will find an officer guilty in such a case, nor can any court direct them to do it; for it is the fraud and the malice that intitles the party to the action: In this case, the Defendants knew the Plaintiff to be a burghers, and yet fraudulently and maliciously hindred him from his right of voting; and justice must require, that such an obstinate and unjust ministerial officer should not escape with indemnity.

That the officer is only ministerial in this case, and not a judge, nor acting in a judicial capacity, is most plain; his business is only to execute the precept, to assemble the electors to make the election, by receiving their votes, computing their numbers, declaring the election, and returning the persons

persons elected: The Sheriff or other Officer of a borough, is put to no difficulty in this case, but what is absolutely necessary in all cases. If an execution be against a man's goods, the Sheriff must at his peril take notice what goods a man has.

Another objection was made in respect to the novelty of the action; it was said, never any such action was brought.

In answer to this objection, it may be said, that probably there have not been many occasions given for bringing such suits. It is to be hoped, that very few have ever been so presumptuous, as to dare to make an obstinate and malicious refusal of an undisputed vote. If the case has happened before, perhaps the party, out of consideration that only small damages were to be expected, might be discouraged, and think it better to acquiesce. And it is probable, the ill-designing officer would be at least so cautious, as to refuse the votes of such persons only, as he thought, by reason of the meanness of their circumstances, were unable to vindicate their right. It is not every one that has such a true *English* spirit as the Plaintiff, who could not sit down mearily under a wrong done to him, in one of the most valuable privileges of an *Englishman*. It is not the novelty of the action that can be urged against it, if it can be supported by the old grounds and principles of law: The ground of law is plain, certain, and indeed universal, that where any man is injured in his right, by being either hindered in, or deprived of the enjoyment thereof, the law gives him an action to repair himself.

The case of *Hunt and Doremán*, which was, 16 *Jac. I. Ann. Dom. 1618.* of an action by the landlord against the tenant, for hindering him from searching his house to see whether it was in repair, was never brought before that time: And that of *Turner and Starling* was not brought till 23 *Car. II.*

The

The law of *England* is not confined to particular precedents and cases, but consists in the reason of them; which is much more extensive than the circumstance of this or that case: *ratio legis est anima legis*; & *ubi eadem ratio, ibi idem jus*, are known maxims.

An action against the master of a ship, for that the ship, lying in the river of *Thames*, was robbed, was maintained upon the same reason as against a common carrier; yet such an action was never known until 23 *Car. II.* in the case of *Moss and Slue. 1 Car. 15. Jones 93. Palmer 313. Smith and Cranshaw*; an action of the case was brought for maliciously, and without any probable cause, indicting the Plaintiff of high-treason: This was the first action that was ever brought in such a case; and yet it was adjusted maintainable, upon the same reason as upon a malicious indictment of Felony, 2 *Levinz. 250. Heming and Beal*; an action of the case was brought against the Mayor of a town, for refusing the Plaintiff to give his vote at the choice of a new Mayor: And there was not any scruple made, but that the action did well lie, though that was the first precedent.

It is granted, that if a freeman who hath a right to give his vote for the choice of a Mayor, be denied his vote, he may maintain an action upon the case.

There can be no difference between that case and this; unless it can be supposed that the right to vote at the election of a Mayor, is of higher estimation in the eye of the law, than a right to choose members to serve in the high court of parliament.

This action is not only founded upon the reason of the common-law, but it hath the sanction of an act of Parliament, viz. The statute of *West. 2 cap. 24.* which says, *That whensoever from thenceforth it shall fortune in chancery, that in one case a writ is found, and in a like case falling under like right, and wanting like remedy, none is found, the clerk of*  
the

*the chancery shall agree in making a writ, and by consent of men learned in the law, a writ shall be made, lest it should happen hereafter, that the King's court might fail in ministring justice to complainants.*

The objection most insisted on, was, that this is a matter relating to Parliaments, and ought to be determined by the law and custom of Parliaments; and for that reason is not cognizable in the Queen's courts.

In answer to this objection, it was shewed, first, that this case is proper in the nature of it, to be determined in the Queen's court.

2. There is no other provision made for the Plaintiff, who is highly injured in his right, but by bringing his action in the courts of law, that have power to determine of mens lives, liberties and properties.

First, the case in the nature of it is proper for the Queen's courts. This will be apparent, if the several rights of electing members to serve in the house of Commons be considered.

The right of chusing Knights of the shire is founded upon the electors freehold. Matters of freehold are determinable originally and primarily in the Queen's court, by the rules and methods of the common law, by a Jury sworn, and by the evidence of witnesses upon oath: And as the right of the freehold is determinable there, so are all benefits, rights and advantages depending thereupon, or belonging thereto.

If a freeholder's voice be refused by a Sheriff, what is it should hinder the Queen's court from trying and determining this matter, like all other questions of freehold, by a Jury, upon the oaths of witnesses, or evidence in writing, whether the Plaintiff that supposes himself wronged was a freeholder or not?

The right of chusing citizens and burgessees depends either upon prescription or custom, or upon letters patents; these are also primarily and originally cognizable



nizable by the Queen's courts: Customs and prescriptions are triable by the country, that is, by a jury of twelve men of that county where the custom is alleged to be: This is a known law in all cases without exception.

And as to letters patents, if pleaded specially, the court must judge of them; and if either party conceives the court hath judged amiss, he hath his remedy by writ of error, till at last it comes where it will receive a final judgment. So that every right which an elector can have, is proper for the determination of the Queen's courts. There are various ways of election in different boroughs, but they all depend upon charters or customs: And therefore are not more difficult to determine, than other franchises or liberties which depend upon the same foundations.

And whereas it was said, that by a late act of Parliament in the 7 and 8 *Will. III.* the last determination of the House of Commons concerning the right of elections, is to be pursued; it amounts to no more than this, that the officer who is to make the return is to take care to return him to be elected, who is chosen by a majority of electors, qualified according to the last determination of the House of Commons; if he does so, he incurs no danger, he is not liable to an action, but the House of Commons it self is not bound by that rule. Now suppose the officer will deny a man a vote, who according to the last determination there ought to have one, and this the officer did well know, what is it hinders him that had right, according to that determination, from bringing his action against the officer who hath injured him? It cannot be the act of Parliament, for the Queen's courts are by law the first and original expounders of the statutes of this realm.

But

But secondly, There is no other court of jurisdiction appointed by the law of *England*, for determining the right, and repairing this injury, but the courts of *Westminster*.

It is a general rule, that whoever impeaches the jurisdiction of one court, must intitle some other court to have a jurisdiction of that cause; but that is impossible to be done in this case.

It was said, that the determination of the right of elections of members to serve in Parliament, is the proper business of the House of Commons, which they always would be very jealous of; and this jurisdiction of theirs is uncontested, that they exercise a great power in that matter, for they oblige the Officer to alter his return according to their judgment; and that they cannot judge of the right of election, without determining the right of the electors; and if electors were at liberty to prosecute suits touching their right of giving voices, in other courts, there might be different judgments, which would make confusion, and be dishonourable to the House of Commons, and that therefore such an action was a breach of their privilege.

As to these objections, several answers were given.

It was admitted, that the House of Commons exercise a jurisdiction, in determining the right of election of their own members; and though the time may be assigned, when that jurisdiction was exercised in another place, yet there has been a usage long enough to hinder that point from being drawn in question, especially after the sanction given to it, by the act made in the seventh year of King *William's* reign.

But though it be true, that the merit of the election of a member, be a proper subject for the House of Commons to judge of, because they only can give the proper and most effectual remedy, by excluding the usurper, and giving possession of the

place to him who has the right; yet there is a great difference between the right of the electors, and the right of the elected; the one is a temporary right to a place in Parliament, *pro hac vice*, the other is a freehold, or a franchise: Who has a right to sit in the House of Commons may be properly cognizable there; but who has a right to chuse, is a matter originally established, even before there was a Parliament: A man has a right to his freehold by the common law, and the law having annexed his right of voting to his freehold, it is of the nature of his freehold, and must depend upon it. The same law that gives him his right, must defend it for him, and any other power that will pretend to take away his right of voting, may as well pretend to take away the freehold, upon which it depends.

To say the plaintiff, in this case, may apply to the House of Commons, is not sufficient, unless proved; never any single elector of any county or borough, did complain to the House of Commons, that he was debarred of his vote, and desire them to determine his particular right. Sometimes, some of those who have right to chuse in a borough have complained, that persons have been returned by the Officer, who were not duly elected, as being an injury done to the whole community of the borough, to have a person without right sit there as their representative: But this is only to bring the merits of the election in question, of which that house hath cognizance, and therefore, as incident and necessary thereto, they may try the right of electors, which of them, by custom, or letters patents, have voices; but this is no more than all courts have. In the ecclesiastical courts, which proceed according to the civil law, if the suit be originally proper for their jurisdiction, they have power to determine things foreign thereto, as if letters patents, or conveyances of lands come in question, though primarily and originally determinable in the courts of common law,

law. Matrimony is properly under the jurisdiction of the ecclesiastical court, and if a question arises between the supposed married parties in their lifetime, or upon dower, or bastardy, it shall be tried and determined there: But when an action is brought by a man and woman, supposing her to be his wife, if the defendant pleads in abatement, that they were not married, it shall be tried by a Jury where the action was brought; so if any one's title to lands depends on a marriage, if an action be brought to try the title, the marriage may be determined by a Jury. This shews plainly, that because the House of Commons may determine who are electors, and who are not, incidently, and so far only, as it is necessary to try the right of the election, it doth not follow, that when the right of election is not in question, they can try the right of an elector.

When the right of the candidate is examined in the House of Commons, it is in order to determine which person hath the right to join with them in the making of laws, and other publick services; and if, in order to the determining this point, the House of Commons must judge of the electors, they do it only to this purpose. But the courts of law judge of an elector's right wholly to another end, as it is a legal right, to assert that, and to repair in damages the elector who is wrongfully hindered from exercising it. This is what the House of Commons cannot do, nor to this day was there ever any application made to them to do it, and it may be reasonably supposed they will not now begin to take it upon them.

It commonly takes up a great part of the time of a session, to determine the cases of elections, before they can be sure the house is composed of such as have a right to sit; but should they once pretend to take cognizance of particular mens complaints, in order to decide the rights of electors, it would be impossible for them to have any leisure to employ them-



themselves about the *ardua & urgentia negotia Regni*, the safety and defence of the kingdom, for which the writ calls them together. It is granted, that the deciding of the right of electors is a matter of great weight, and in consequence concerns the lives and liberties of the subjects of *England*, but the law hath provided a proper remedy to be pursued in the ordinary methods of justice, a remedy that is adequate, where damages may be recovered. The plaintiff, in this case, knew he had a right by law to give his vote, and when he found himself deprived of it, he resorts to the law for his remedy: And it is probable, most of the electors of *England* will be of his mind, and think it for their interest to resort to the courts of *Westminster-hall*, for asserting this great right of theirs upon occasion, where they may prove their case by witnesses upon oath, and have their damages assessed by their countrymen duly sworn, nothing of which can be done, if they are to seek for a remedy in the House of Commons.

Where a man is injured, if he cannot bring his action to recover the thing it self he hath lost by the injury, the law will always give him damages in lieu thereof.

It was said in the debate of this case, that instances were to be given, where the party injured did not recover damages, as in case where one has a right of presentation, and is disturbed, he could not recover damages at the common law, and that was resembled to the right of an elector, which was said to be only a right of nomination. But the answer to this objection is plain; there the law gives the party a remedy to recover the presentation, the thing that was taken from him, to which he is restored by the judgment; but in the present case, there is no possibility for the plaintiff to recover the thing he has lost, which was his vote at the election, for that election is over, and can never be had again, so that the plaintiff cannot possibly have any reparation,

reparation, unless it be in damages, and this sort of reparation, the House of Commons cannot give him.

If the plaintiff, and all other injured electors, should be obliged to go to the House of Commons for satisfaction, it may be reasonably supposed, that the Parliament may be dissolved before it could come to his turn to have his cause heard: What would be the consequence of this? If the plaintiff must be thereby without remedy, would not the law be notoriously defective; and yet none will say, that another Parliament did ever take cognizance of any injury done, upon account of an election, to a preceding Parliament: But suppose the next House of Commons will determine it, what endless work would the House of Commons be engaged in? For probably, the ensuing election would make as many new questions as that which went before, and which the Parliament did not live long enough to dispatch.

As to what was objected, that the same matter may come in question in the House of Commons, where it may be determined, That this plaintiff hath no right; so that great confusion would arise from different judgments in different courts; it is no more than what may happen every day in *Westminster-hall*, where the several courts may be of various opinions upon the same question, and yet no hurt is done to the publick; nay, this is no more than happens often in the House of Commons, where the right of election in the same borough is decided different ways in different Parliaments, and they do not think themselves dishonoured by it.

This contrariety of judgment can never appear, for the House of Commons never gives a direct judgment, on this or that individual elector's right; the voting is either upon a general question of the competitors, or where the right of election in the borough is placed, whether all inhabitants, or those under a particular qualification, or whether the whole commonalty, or a selected number have voices,

and all these are but ways and means to determine the right of election.

If the House of Commons judge of the right of a particular elector at any time, it is only *pro ista vice*, so far as it relates to the particular case before them, but surely the house never thought the electors freehold finally concluded thereby, because he is no party to that suit, his right came not there in question originally, but consequentially, in a cause litigated between other persons, to which he is no party, and it cannot be agreeable to right reason, or the principles of law, for a man's right to be conclusively determined, in a cause between other parties.

And after all, where is the damage to the publick, if there should be a variety in the determination of the House of Commons, and the courts of *Westminster*? It is not impossible, in the nature of things, for the courts of law have great advantages which the House of Commons want, they want the help of juries, and the power of giving oaths, and they ought not to be displeased with their electors, if they resort to courts provided with these powers, for asserting their right of election, especially when it is considered, that the person whose pretensions the House of Commons approves of, will sit there, which is all they are concerned in: They are the elected; and it would be strange, if that should intitle them to challenge the sole power of deciding the rights of their electors; which is indeed to chuse their electors.

It was urged as a great argument against the maintaining this action, that it had been adjudged in the case of *Mr. Onslow*, in the 33d year of King *Charles the second* (second *Vent.* 37.) That no action did lie at common law, for a false return of a member to sit in Parliament; and that in the case of *Barnardiston and Soame*, it was adjudged the candidate could not maintain an action against the Sheriff for a double return; and if the person elected to serve in Parliament cannot maintain an action against

the

the officer, it was urged *a fortiori*, that the person electing, who perhaps is but a cobbler, ought not to be allowed to have such an action.

It was answered, that the law of *England* has no respect to persons: If an elector be a cobbler, he is a freeman of *England*, and has that great privilege belonging to him, to be represented in Parliament. It was remembered with what great variety of opinion among the Judges, that case of Sir *Samuel Barnardiston* was determined, and what an alarm that judgment gave to the House of Commons, to such a degree, that in the session of Parliament 1679. a Committee was appointed to enquire into it as a grievance. And it was observed, that the great design of the act of Parliament made in the seventh year of the late King (which was often mentioned in the debate of this case to other purposes) was to cure the many inconveniencies arising from that judgment, and the judgment in Mr. *Onslow's* case, which only followed *Barnardiston's*, and was judged upon the authority of it. But there is no resemblance between those cases and the case of an elector. In *Barnardiston's* case of a double return of members, the reason on which the judgment was founded, was, that a double return was no return which the law took notice of, but was only allowed of by the custom of Parliament. When an officer who doubts, makes a double return, he submits to the judgment of the House of Commons; and if that house admits of such a return, as they had often done, it would be hard the law should subject a man to an action, for submitting a matter of fact, (the truth of which the officer doubts) to the determination of those who have a jurisdiction of the matter, and approve the manner of such a return.

In the other case of a false return of a member, several reasons may be assigned for the judgment, which are not applicable to the case of an elector; perhaps it might be because such a return is a manifest



injury to every one of the electors (tho' principally to the candidate) and therefore it might fall within the reason of *William's* case above-mentioned, that every elector might sue him; and therefore none of them severally can maintain the action. But there is another reason very obvious, because the candidate has a proper remedy to recover his place, from which he is excluded by the false return; the right of election is cognizable in the House of Commons, there he will recover his seat in Parliament, which is what the law has the principal regard to, and there is no reason he should have another remedy elsewhere.

It is absurd to say, the electors right of chusing is founded upon the law and custom of Parliament; it is an original right, part of the constitution of the kingdom, as much as a Parliament is, and from whence the persons elected to serve in Parliament do derive their authority, and can have no other but that which is given to them, by those that have the original right to chuse them; this doth not touch the jurisdiction claimed and exercised by the House of Commons, to try the right of the election of their own members; they who pretend to be admitted to sit there, ought to make out their right to the house; but there is no ground to infer from thence, that the house hath power to try or determine the right of other persons, who are not their members, and do not pretend to any place amongst them.

It was said, that if this action were allowed, there would be a way found out for the Lords to let themselves into, to judge of the right of the members of the House of Commons to sit there, and by parity of reason to judge of their own privileges, as if actions were brought for words spoken in the House of Commons, or other things happening in that house; which would be of ill consequence.

But it was said in the first place, that this objection was little applicable to the present case, because it has

has no relation to the sitting of that member, for whom the elector who brings his action gave his vote.

And secondly, if things are so ordered by the constitution of the *English* government, that the ultimate resort in point of judicature is lodged with the Lords, let the case concern what it will, when it is brought before them by writ of error, they are bound to give judgment one way or other; and as to the particular instance mentioned, relating to words spoken in the House of Commons, it was said, there never was a greater attempt made upon liberty of speech in the House of Commons, than by the information brought in the *King's-Bench*, 5 *Car.* 1. against Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine*, Esquires, for words spoke in the House of Commons; they pleaded to the jurisdiction of the court, as being for what was done in Parliament, and therefore ought not to be examined or punished elsewhere; but judgment was given against them, and great fines imposed upon them (*Cro. Car.* 181.) in the Parliament, which met in 1640, these proceedings were taken into consideration with great warmth, and the 8th of *July*, 1641. it was resolved in the House of Commons, that the exhibiting of that information was a breach of the privilege of Parliament; and that the over-ruling of the plea to the jurisdiction of the court, and the judgment and all that followed thereupon, was against the law and privilege of Parliament, and many other severe votes were passed. Thus the matter rested till after the restoration of King *Charles* the second; but when things grew to be settled, and there was leisure to consider the consequences of former proceedings, the House of Commons began to think, that those votes were not to be depended upon as a sufficient security, in a case of so high a nature, since upon liberty of speech all Parliamentary debates were founded; and they could

could not think that great privilege safe while so solemn a judgment stood in force. Therefore in 1667, the consideration of this matter took up a great part of the session, and the best expedient they could find out was, first, to come to a resolution among themselves, that the judgment given, 5 *Car. 1.* in that case, was an illegal judgment, and against the freedom and privilege of Parliament; and then to present this resolution of theirs to the Lords at a conference, which was done 10 *December* 1667, and to desire their concurrence. The next day the Lords concurred in the resolution, and at the same time (which was a thing aimed at and desired by the House of Commons) the Lords ordered the Lord *Holles* to bring a writ of error in Parliament, to the end there might be a judicial determination of that great point, which was done accordingly; and on the 15th of *April*, 1668, that cause coming to be heard in Parliament, the judgment in the *King's-Bench* was reversed, to the great satisfaction of the House of Commons.

So little did the House of Commons entertain jealousies of this kind, that they themselves resorted to the judicature of the Lords, in the manner that has been mentioned, upon so weighty an occasion.

It was objected, that many inconveniencies would follow, if this action were allowed; but they were very sparing in giving particular instances of those inconveniencies.

But nothing is plainer, than that by the plaintiff's prevailing in this action great inconveniencies will be prevented, and the subjects right and property secured against the partialities and corruption of officers, who are trusted in a matter of so great moment, as the receiving and allowing their suffrages upon elections.

This tends to encounter false returns in the first approach, and to have just returns is all the House of Commons ought to desire.

How

How endless would the inconveniencies be, if this action did not lie? How would occasions of complaint be multiplied? The officers who had the return would become the masters of elections, and admit and reject electors as they pleased with impunity; for if the electors are only to seek for a remedy before the House of Commons, it would be a remedy worse than the disease; the greatest part of their cases would never be determined for want of time; and they who could get their cases heard, could have no amends, that is, no damages given them for reparation of the wrong, besides the absurdity of having, for the most part, the parties to the injury, those who sit by a false return, parties to the judgment.

So that to deny this action, is to deny the benefit of the law in a matter of the most tender concern to an *Englishman*.

To pretend it to be a breach of privilege of the House of Commons, for an elector to seek for remedy at law, if he be wrongfully excluded of his vote, is very strange.

That certainly can never be esteemed a privilege of Parliament, that is incompatible with the rights of the people. Every *Englishman* is intitled to reparation for the injuries done to his rights and franchises, in the ordinary and common methods of justice, where the juries who try, and the witnesses who give evidence, are to be upon their oaths. *Magna charta, cap. 29.* is very exprels. *No Freeman shall be disseised of his freehold, or liberties, or free customs, unless by the lawful judgment of his Peers, or by the law of the land.*

By the *lawful judgment of the Peers*, in the case of a commoner, is meant, by a jury of lawful men upon their oaths.

If one be injured in such a manner as the plaintiff in this action hath been, no man can say that *per legem terræ*, by the law of the land, he can have a remedy



a remedy for satisfaction, and asserting his right, in the House of Commons; if there be any such law, it must be either statute law, or common law. No Statute gives him such a remedy, nor doth the common law, because that is constant usage for time immemorial; and there is not one precedent can be produced, that ever any man, upon such an occasion, did ever apply to the House of Commons for relief.

Upon the fourteenth day of *January*, 1703. the House of Lords reversed the judgment, and gave judgment, that the plaintiff should recover.

This state of the case being read and approved of, the house came to the following resolutions, *viz.*

It is resolved by the Lords Spiritual and Temporal in Parliament assembled, that by the known laws of this kingdom, every freeholder, or other person, having a right to give his vote at the election of members to serve in Parliament, and being wilfully denied or hindered so to do by the officer who ought to receive the same, may maintain an action in the Queen's courts against such Officer, to assert his right, and recover damages for the injury.

It is resolved by the Lords Spiritual and Temporal in Parliament assembled, that the asserting, that a person having right to give his vote at an election, and being hindered so to do by the Officer, who ought to take the same, is without remedy for such wrong by the ordinary course of law, is destructive of the property of the subject, against the freedom of elections, and manifestly tends to encourage corruption and partiality in Officers, who are to make returns to Parliament, and to subject the freeholders; and other electors, to their arbitrary will and pleasure.

It is resolved by the Lords Spiritual and Temporal in Parliament assembled, that the declaring *Matthew Ashby* guilty of a breach of privilege of the House of Commons, for prosecuting an action against the constables of *Ailesbury*, for not receiving his vote at an election, after he had in the known and proper methods of law, obtained a judgment in Parliament for recovery of his damages, is an unprecedented attempt upon the judicature of Parliament, and is in effect to subject the law of *England* to the votes of the House of Commons.

It is resolved by the Lords Spiritual and Temporal in Parliament assembled, that the deterring electors from prosecuting actions in the ordinary course of law, where they are deprived of their right of voting, and terrifying Attornies, Solicitors, Counsellors, and Serjeants at law, from soliciting, prosecuting, and pleading in such cases, by voting their so doing to be a breach of privilege of the House of Commons, is a manifest assuming a power to controul the law, to hinder the course of justice, and subject the property of *Englishmen*, to the arbitrary votes of the House of Commons.

The declaration and lenity of the House of Commons to *Ashby*, had not that effect as might have been expected, for before the then following sessions, not only execution was taken out upon the said judgment, but Mr. *Mead* brought actions of the like nature for *John Paty*, *John Oviat*, *John Paton*, Jun. *Henry Basse*, and *Daniel Horne*, five other inhabitants of *Ailesbury*, for being denied their votes at the election of members to serve in Parliament for the said borough of *Ailesbury*; of which complaint being made to the House of Commons, they proceeded as follows.

*All the proceedings in relation to the Ailesbury-men, committed by the House of Commons: And the report*

port of the Lords journal, and reports of the conferences, and of the free conference. \*

*Martis 21 die Novembris, 1704.*

A complaint being made to the house, that *Robert Mead*, an Attorney at law, had proceeded in the cause of *Ashby and White*, and others, since the last session of Parliament, and taken the defendants in execution, in breach of the privilege of this house.

*Ordered,*

That the matter of the said complaint be heard at the bar of this house upon *Thursday* morning next.

*Ordered,*

That the said *Robert Mead* do attend this house upon *Thursday* morning next.

*Jovis die 23 Novembris, 1704.*

The order of the day being read for the hearing the matter of the complaint against *Robert Mead*, an Attorney at law, for having proceeded in the cause of *Ashby and White*, and others, since the last session of Parliament, and taken the defendants in execution, in breach of the privilege of this house:

\* *Martis 13 die Martii, 1704.* *Ordered,* That all the proceedings in relation to the *Ailesbury-men* committed by this house, and the report of the Lords journal, and reports of the conferences, and of the free conference, be printed.

*Ordered,*

That Mr. Speaker do appoint the printer of the said proceedings and reports. *Paul Jodrell*, Cl. Dom. Com.

*Ordered,*

Ordered,

That the hearing the matter of the said complaint be adjourned until *Tuesday* seven-night.

Ordered,

That the said *Robert Mead* do attend this house upon *Tuesday* seven-night.

A further complaint being made to the house, that since the resolutions of this house the last session, upon the case of *Asbby* and *White*, there had been several new actions brought by *John Paty*, *John Oviat*, *John Paton*, Junior, and *Henry Basse*, and prosecuted by the said *Robert Mead*, against the Constables of *Ailesbury*, in breach of the privilege of this house.

Ordered,

That the matter of the said complaint be also heard at the bar of this house upon *Tuesday* seven-night.

Ordered,

That the said *John Paty*, *John Oviat*, *John Paton*, Junior, and *Henry Basse*, do attend this house upon *Tuesday* seven-night.

Ordered,

That copies of the original declarations in the said actions be laid before this house.

*Veneris 24 die Novembris, 1704.*

Ordered,

That *Daniel Horne*, a Plaintiff in one of the actions brought against the Constables of *Ailesbury*, of which complaint was made to the house yesterday, do attend this house upon *Tuesday* seven-night.

*Martis.*



*Martis 5 die Decembris, 1704.*

The orders of the day being read, for the hearing the matter of the complaints of several breaches of privilege, committed by *Robert Mead*, *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*, and for their attending this house: The Serjeant at Arms was called upon, to give an account of what had been done for the summoning of them; and he acquainted the house, that his messenger had been at *Ailesbury*, and left a copy of the order at Mr. *Mead*'s house, and at his chamber in *Thavies-Inn*, but that he does not attend; but that all the other persons had been summoned, and do attend.

And thereupon Mr. *Arthur Crabb* was called for, and brought in with the mace to the bar; who said: That he was an Attorney for the late Constables of *Ailesbury*, in five several actions, at the several suits of *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*, and that he did serve Mr. *Robert Mead* the 6th of *March* last, with the resolutions of this house of the last session of Parliament, relating to the proceedings in the cause of *Ashby* and *White*, and others, by giving him a copy thereof, and shewing him the resolutions signed by the Clerk of this house: And that he afterwards, viz. the 10th of *June* last, had from Mr. *Mead* copies of five declarations in the said actions, viz. one from Mr. *Mead* himself, and the other four left at his house, which Mr. *Mead* afterwards owned, and that he paid Mr. *Mead* for them all. Which copies of declarations the said Mr. *Crabb* produced to the house, together with notice in writing from the said Mr. *Mead*, the 22d of *July* last, that he would try one of the said actions, but not the other four, at the then next assizes.

And then he withdrew.

And

And the notice was read.

And the copy of the declaration between *Paty* and *White & al*<sup>s</sup> was also read.\*

Then the said *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*, were severally called into the bar, and examined, and then withdrew.

*Resolved*,

That it appears to this house, that *John Paty* of *Aylesbury*, has been guilty of commencing and prosecuting an action at common law, against *William White*, and others, late Constables of *Aylesbury*, for not allowing his vote in the election of members to serve in Parliament, contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges of this house.

*Resolved*,

That it appears to this house, that *John Oviat* of *Aylesbury*, has been guilty of commencing and prosecuting an action at common law, against the late Constables of *Aylesbury*, for not allowing his vote in the election of members to serve in Parliament, contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges of this house.

*Resolved*,

That it appears to this house, that *John Paton*, Junior, of *Aylesbury*, has been guilty of commencing and prosecuting an action at common law, against the late Constables of *Aylesbury*, for not allowing his vote in the election of members to serve in

\* This Declaration of *Paty* relates to the election of members to serve in the Parliament, called in the 12th year of his late Majesty's reign.

Parliament, contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges of this house.

*Resolved,*

That it appears to this house, that *Henry Basse* of *Aylesbury*, has been guilty of commencing and prosecuting an action at common law, against the late Constables of *Aylesbury*, for not allowing his vote in the election of members to serve in Parliament, contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges of this house.

*Resolved,*

That it appears to this house, that *Daniel Horne* of *Aylesbury*, has been guilty of commencing and prosecuting an action at common law, against the late Constables of *Aylesbury*, for not allowing his vote in the election of members to serve in Parliament, contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges of this house.

*Resolved,*

That it appears to this house, that *Robert Mead* has been guilty of soliciting and prosecuting (as Attorney at law) divers actions at common law, against *William White* and others, late Constables of *Aylesbury*, for not allowing divers votes in the election of members to serve in Parliament, contrary to the declaration, in high contempt of the jurisdiction, and in breach of the privileges of this house.

*Ordered,*

That the said *John Paty* be, for his said offence, committed prisoner to her Majesty's Goal of *Newgate*: and that Mr. Speaker do issue his warrant accordingly.

*Ordered,*

*Ordered,*

That the said *John Oviat* be, for his said offence, committed prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his warrant accordingly.

*Ordered,*

That the said *John Paton Junior*, be, for his said offence, committed prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his warrant accordingly.

*Ordered,*

That the said *Henry Basse* be, for his said offence, committed prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his warrant accordingly.

*Ordered,*

That the said *Daniel Horne* be, for his said offence, committed prisoner to her Majesty's Goal of *Newgate*; and that Mr. Speaker do issue his warrant accordingly.

*Ordered,*

That the Serjeant at Arms attending this house do take care that the said warrants be executed.

*Ordered,*

That the said *Robert Mead* be, for his said offence, taken into custody of the Serjeant at Arms attending this house.

*Jovis 1 die Februarii, 1704.*

*Ordered,*

That the Keeper of *Newgate* do to-morrow morning bring to this house *John Paty*, *John Oviat*, *John Paton Junior*, *Henry Basse*, and *Daniel Horne*,



*Horne*, committed by this house, and that Mr. Speaker do issue his warrant or warrants accordingly.

*Veneris 2 die Februarii, 1704.*

The house being informed, that the Keeper of *Newgate* attended (according to order) with *John Paty*, *John Oviat*, *John Paton Junior*, *Henry Basse*, and *Daniel Horne*, committed by this house, several of them were severally called in and examined, and then withdrew.

And also the Keeper and his Clerk, and Turnkey, and one *Edward Hill*, were called in and examined, and then withdrew.

*Ordered,*

That the said *John Paty*, *John Oviat*, *John Paton Junior*, *Henry Basse*, and *Daniel Horne*, be remanded prisoners to her Majesty's prison in *Newgate*; and that Mr. Speaker do issue his warrants accordingly.

*Sabbati 24 die Februarii, 1704.*

The house being informed, that there have been endeavours to bring a writ of error on the proceedings in the court of *Queen's-bench*, upon a *Habeas Corpus* granted there, for the persons committed by this house to *Newgate* for breach of their privilege, and thereby to bring the commitments of this house under the examination of the house of Peers.\*

\* What incensed the Commons yet more, was the behaviour of *John Paty* and *John Oviat*; two of the prisoners, who thinking themselves wronged in their being remanded to *Newgate*, humbly petitioned the Queen for a writ of error, in order to bring the judgment of the court of *Queen's-bench* before her Majesty in Parliament. The Commons were no sooner informed of these petitions, but they made the above votes. *Annals of Queen Anne*, Vol. 3. p. 188.

*Resolved,*

*Resolved,*

That an humble address be presented to her Majesty, humbly to lay before her Majesty the undoubted right and privilege of the Commons of *England*, in Parliament assembled, to commit for breach of privilege; and that the commitments of this house are not examinable in any other court whatsoever: And that no such writ of error was ever brought, nor doth any writ of error lie in this case. And that as this house hath expressed their duty to her Majesty, in giving dispatch to all the supplies, so they have an intire confidence in her Majesty's goodness and justice, that she will not give leave for the bringing any writ of error in this case; which will tend to the overthrowing the undoubted rights and privileges of the Commons of *England*.

*Ordered,*

That the said address be presented to her Majesty, by such members of this house as are of her Majesty's most honourable Privy-council.

*Resolved,*

That whoever has abetted, promoted, countenanced, or assisted the prosecution of the several writs of *Habeas Corpus*, brought for the prisoners committed by this house, and since their being remanded have endeavoured the procuring writs of error, are guilty of conspiring to make a difference between the Lords and the Commons in Parliament assembled, are disturbers of the peace of the kingdom, and have endeavoured, as far as in them lay, to overthrow the rights and privileges of the Commons of *England* in Parliament assembled.

*Ordered,*

That a Committee be appointed to examine what persons have been concerned in soliciting, prosecuting, or pleading, upon the writs of *Habeas Corpus*,

or writs of error, on the behalf of the persons committed to *Newgate* for breach of the privilege of this house; or what other persons have promoted or abetted the same.

And a Committee was accordingly appointed; and that they do meet this afternoon as soon as the house is risen, in the Speaker's chamber, and have power to send for persons, papers, and records, and to sit *de die in diem*.

*Lune 26 die Februarii 1704.*

Mr. Secretary *Hedges* acquainted the house, that their address of *Saturday* last, in relation to the writs of error therein mentioned, having been presented to her Majesty, according to the order, her Majesty was pleased to give this gracious answer, *viz.*

*Her Majesty is much troubled to find the House of Commons of opinion, that her granting the writs of error, mentioned in their address, is against their privileges, of which her Majesty will always be as tender as of her own prerogative; and therefore the House of Commons may depend, her Majesty will not do any thing to give them any just occasion of complaint: But this matter, relating to the course of judicial proceedings, being of the highest importance, her Majesty thinks it necessary, to weigh and consider very carefully what may be proper for her to do, in a thing of so great a concern.*

*Resolved.*

That this House will take her Majesty's gracious answer into consideration to-morrow morning.

The Earl of *Dyſert* reported, from the Committee appointed to examine what persons have been concerned in soliciting, prosecuting, or pleading upon the writs of *Habeas Corpus*, or writs of error, on the

the behalf of the persons committed to *Newgate* for breach of the privileges of this house, or what other persons have promoted or abetted the same, the matter as it appeared to them; which they had directed him to report to the house, which he read in his place, and afterwards delivered in at the clerk's table, where the same was read and is as followeth.

Upon the examination of several persons, it appeared to the Committee, that Mr. *Alexander Denton*, (now Mr. Justice *Denton*) moved in the court of *Queen's-Bench* for the writs of *habeas corpus*, on behalf of the persons committed to *Newgate* for breach of the privileges of this house.\*

That Mr. Serjeant *Hook* moved in the court of *Queen's-Bench*, to shorten the day for the return of the said writs.

That Mr. *Francis Page*, (now Mr. Justice *Page*,) Mr. *James Montague*, Mr. *Nicholas Lechmere*, and Mr. *Alexander Denton* pleaded on the returns of the said writs.

That Mr. *James Montague* (late Lord Chief Baron,) and Mr. *Nicholas Lechmere*, (late Lord *Lechmere*,) attended as counsel at the Lord Chief Justice *Holt's* chamber, to consider what entry should be made of the *Remittitur*.

*Hollingshead*, a messenger attending this house, informed the Committee, that he endeavoured to serve the summons upon Mr. *Lee* of *Clement's Inn*; but not meeting with him, he shewed his clerk the original order of summons, which his clerk refused to read; thereupon he offered him a copy of it, which he refused to receive; however he left the copy in Mr. *Lee's* chamber.

\* The arguments on the *habeas corpus* are inserted after these proceedings, that there may be no interruption in the proceedings of the House of Commons.



*Kingham*, another messenger, informed the Committee he had personally served ——— *Harris* with the order of summons, and he said he would attend: But neither *Lee* nor *Harris* attended the Committee according to the summons of the Committee.

*Resolved,*

That it appears to this house, that Mr. *Lee*, of *Clement's-Inn*, having been summoned to attend a Committee of this house, and not attending thereupon, is guilty of a contempt and breach of the privilege of this house.

*Ordered,*

That the said Mr. *Lee* be, for his said contempt and breach of privilege, taken into the custody of the serjeant at arms attending this house.

*Resolved,*

That it appears to this house, that ——— *Harris* having been summoned to attend a Committee of this house, and not attending thereupon, is guilty of a contempt and breach of the privilege of this house.

*Ordered,*

That the said ——— *Harris* be, for his said contempt and breach of privilege, taken into the custody of the serjeant at arms attending this house.

A motion being made, and the question being put, that the farther consideration of the said report, be adjourned till to morrow morning?

It passed in the negative.

Then a debate arising upon the said report, and the time being come for the house to attend her Majesty, as she had appointed with an address:

*Resolved,*

*Resolved,*

That the debate be adjourned.

*Resolved,*

That the debate be adjourned till six o'clock in the evening.

*Post meridiem.*

The house resumed the adjourned debate, upon the report from the committee appointed to examine what persons have been concerning in soliciting, prosecuting, or pleading upon the writs of *babeas corpus*, or writs of error, on the behalf of the persons committed to *Newgate* for breach of the privilege of this house; or what other persons have promoted or abetted the same.

*Resolved,*

That Mr. *Francis Page*, in pleading upon the return of the *babeas corpus*, on behalf of the prisoners committed by this house, is guilty of a breach of the privilege of this house.

*Ordered,*

That the said Mr. *Francis Page* be, for the said breach of privilege, taken into the custody of the serjeant at arms attending this house.

*Resolved,*

That Mr. *James Mountague*, in pleading upon the return of the *babeas corpus*, on the behalf of the prisoners committed by this house, is guilty of a breach of the privilege of this house.

*Ordered,*

That the said Mr. *James Mountague* be, for the said breach of privilege, taken into the custody of the serjeant at arms attending this house.

*Resolved,*

*Resolved,*

That Mr. *Nicholas Lechmere*, in pleading upon the return of the *habeas corpus*, on the behalf of the prisoners committed by this house, is guilty of a breach of the privilege of this house.

*Ordered,*

That the said Mr. *Nicholas Lechmere* be for the said breach of privilege, taken into the custody of the Serjeant at Arms attending this house.

*Resolved,*

That Mr. *Alexander Denton*, in pleading upon the return of the *habeas corpus*, on the behalf of the prisoners committed by this house, is guilty of a breach of the privilege of this house.

*Ordered,*

That the said Mr. *Alexander Denton* be, for the said breach of privilege, taken into the custody of the Serjeant at Arms attending this house.

*Ordered,*

That *John Paty*, prisoner in *Newgate* by order of this house, for a breach of the privilege of this house, be discharged from his said confinement there, and immediately removed and delivered over into the custody of the Serjeant at Arms attending this house.

*Ordered,*

That *John Oviat*, prisoner in *Newgate* by order of this house, for a breach of the privilege of this house, be discharged from his said confinement there, and immediately removed and delivered over into the custody of the Serjeant at Arms attending this house.

*Ordered,*

*Ordered,*

That *John Paton* junior, prisoner in *Newgate* by order of this house, for a breach of the privilege of this house, be discharged from his said confinement there, and immediately removed and delivered over into the custody of the Serjeant at Arms attending this house.

*Ordered,*

That *Henry Basse*, prisoner in *Newgate* by order of this house, for a breach of the privilege of this house, be discharged from his said confinement there, and immediately removed and delivered over into the custody of the Serjeant at Arms attending this house.

*Ordered,*

That *Daniel Horne*, prisoner in *Newgate* by order of this house, for a breach of the privilege of this house, be discharged from his said confinement there, and immediately removed and delivered over into the custody of the Serjeant at Arms attending this house.

*Ordered,*

That Mr. Speaker do issue his warrants for the removal and delivery over of the said *John Paty*, *John Oviat*, *John Paton* junior, *Henry Basse*, and *Daniel Horne*, into the custody of the Serjeant at Arms attending this house.\*

\* Tho' the Commons had resolved before to take her Majesty's answer into consideration, yet being apprehensive lest her Majesty should grant the writs of error, whereby the five *Aylesbury*-Men might be discharged from their imprisonment, they ordered them to be removed from *Newgate*, and taken into the custody of the Serjeant at Arms; which order was executed at midnight, with such circumstances of severity and terror, as have been seldom exercised towards the greatest offenders. *Annals of Queen Anne*, Vol. 3. R. 189.

*Martis*



*Martis 27 die Februarii, 1704.*

The house calling upon the Serjeant to give an account what he had done in execution of the orders of this house made yesterday, he gave the house an account thereof according as followeth, *viz.*

That he had received into his custody the five persons which were committed to *Newgate*, this morning, and had found Mr. *James Mountague* at his own house, and taken him into his custody; but that he shewed a protection from the house of Lords, upon the petition of the said persons, by which the said Mr. *Mountague*, and Mr. *Page*, Mr. *Lechmere*, and Mr. *Denton*, and *William Lee*, and *John Harris*, (who were yesterday ordered to be taken into custody) were assigned Counsel and Attornies for the said persons, and protected by the House of Lords; and that all Officers, Serjeants at Arms, and other persons, were thereby forbid to meddle with them; with which Mr. Serjeant told Mr. *Mountague* he would acquaint this house.

That he had also like to have taken Mr. *Nicholas Lechmere*, but that he got out of his chamber in the *Temple*, two pair of stairs high at the back window, by the help of his sheets and rope: And that the said *Harris* was also taken into custody: But that Mr. *Page*, and Mr. *Denton*, and Mr. *Lee* were not then to be found.

*Ordered,*

That some members be appointed to search the journals of the House of Lords, what proceedings have been in that house, in relation to the five persons committed to *Newgate* for breach of the privilege of this house; and report the same to the house.

And some members were appointed accordingly.

The

The orders of the day being read:

*Ordered,*

That the consideration of her Majesty's gracious answer to the address of this house of *Saturday* last, relating to the writs of error therein mentioned, be adjourned till to-morrow morning.

*Mercurii 28 die Februarii, 1704.*

Mr. *Bromley* reported, that the members appointed to search the journals of the House of Lords, what proceedings have been in that house, in relation to the five persons committed to *Newgate* for breach of the privilege of this house, had searched the same accordingly, and had taken thereout what they found relating to the same; and also copies of two petitions of the said persons; which he read in his place, and afterwards delivered in at the table, where the same were read, and are as follow, *viz.*

*Die Lune 26 Februarii, 1704.*

Upon reading the petition of *Daniel Horne, Henry Basse, and John Paton, jun.* as also the petition of *John Paty, and John Oviat*, prisoners in *Newgate*, in relation to some proceedings for obtaining the writs of error, and praying (amongst other things) the protection of this house for their counsel and agents.

It is ordered by the Lords spiritual and temporal in parliament assembled, that the said petitions shall be taken into consideration to-morrow at twelve o'clock, and all the Lords summoned to attend; as also the Judges in town, who are to come prepared to speak to the point, whether a writ of error be a writ of right, or a writ of grace? And that the petitioners have notice, that when they send to this house the names of their council and agents they desire

desire to be protected, they shall have the protection of this house for them.

In pursuance of the order of this day made, *Daniel Horne, Henry Basse, John Paton, jun. John Paty, and John Oviat*, prisoners in *Newgate*, sent the names of their council and agents, viz.

*James Mountague, Esq;*  
*Nicholas Lechmere,*  
*Alexander Denton,*  
*Francis Page,* } Counsellors at Law.

*William Lee,*  
*John Harris,* } Attorneys at Law.

Whereupon,

It is ordered by the Lords spiritual and temporal in Parliament assembled, That *James Mountague, Esq;* *Nicholas Lechmere, Alexander Denton,* and *Francis Page*, Counsellors at law, and *William Lee,* and *John Harris*, Attorneys at law, shall, and they have hereby the protection and privilege of this house, in the advising, applying for, and prosecuting the said writs of error; and that all keepers of prisons, and goalers, and all serjeants at arms, and other persons whatsoever, be, and they are hereby (for, or in respect of any of the cases aforesaid) strictly prohibited from arresting, imprisoning, or otherwise detaining or molesting, or charging the said *James Mountague, Esq;* *Nicholas Lechmere, Alexander Denton, Francis Page, William Lee,* and *John Harris*, or any, or either of them, as they and every of them will answer the contrary to this house.

*To the right honourable the Lords spiritual and temporal, in Parliament assembled,*

*The humble petition of Daniel Horne, Henry Basse, and John Paton, jun.*

*Sheweth,*

**T**HAT your petitioners having a right to vote at the election of members to serve in Parliament for the borough of *Aylesbury*, were refused their votes, to their great wrong and damage.

That the Lords having given judgment in the case of *Ashby* and *White*, viz. that by the known laws of this kingdom, every freeholder, or other person, having a right to give his vote at the election of members to serve in Parliament, and being wilfully denied or hindered so to do, by the officer who ought to receive the same, may maintain an action in the Queen's courts against such officer, to assert his right, and recover damages for the injury; your petitioners thereupon brought the like actions in their own cases.

That they have for so doing been committed to *Newgate*, by virtue of a warrant from the Speaker of the House of Commons.

That your petitioners have endeavoured to obtain their liberty, by such legal methods as by their council they have been advised, without success; so that they have been deprived of their liberty for about twelve weeks, for no other reason, but endeavouring to pursue their legal remedies, according to the judgment of this honourable house.

Wherefore your petitioners humbly beseech your Lordships to take the premises into consideration, and to do therein as to your great wisdoms you shall think fit.

*And your petitioners, as in duty bound, shall ever pray, &c.*

DANIEL HORNE,  
HENRY BASSE.  
JOHN PATON, Jun.  
*his X mark.*

To



*To the Right Honourable the Lords Spiritual  
and Temporal, in Parliament assembled.*

*The humble petition of John Paty, and John Oviat.*

*Sheweth,*

**T**HAT your petitioners having right to vote at the election of members to serve in Parliament for the borough of *Ailesbury*, were refused their votes, to their great wrong and damage.

That the Lords having given judgment in the case of *Asby and White*, viz. That by the known laws of this kingdom, every freeholder, or other person, having a right to give his vote at the election of members to serve in Parliament, and being wilfully denied or hindered so to do by the officer who ought to receive the same, may maintain an action in the Queen's courts against such officer, to assert his right, and recover damages for the injury; your petitioners thereupon brought the like actions in their own cases.

That they have for so doing been committed to *Newgate*, by virtue of warrants from the Speaker of the House of Commons, copies whereof are annexed.

That they did, by the advice of their council, on the 5th day of this instant *February*, move for their writs of *Habeas Corpus*, directed to the keeper of *Newgate*, to bring your petitioners before her Majesty's court of *Queen's-Bench*: Whereupon, the said court, viz. Mr. Justice *Powell*, Mr. Justice *Powys*, and Mr. Justice *Gould*, did grant the said writs, directing the same to be made returnable on the 10th day of *February* aforesaid, notwithstanding that your petitioners said council did insist, that the same was an unusual return, and prejudicial to your petitioners; on which said day of return, your petitioners

petitioners council did argue on their behalf, that by law they ought to be discharged; but by the opinion of the said three judges, they were remanded to the said prison.

That your petitioners being thereupon advised, there was a manifest error in the said judgment, and that they were properly relievable by bringing a writ of error, returnable before her Majesty in this high court of Parliament, they did severally exhibit their petitions to her Majesty, setting forth the proceedings upon the said writs of *Habeas Corpus*; and humbly prayed, that a writ of error might be granted to them respectively returnable in this high-court.

That your petitioners have not been able as yet, to obtain her Majesty's warrant for authorising the curator, to make out the said writs of error, as is usual in such cases.

That your petitioners being advised, that a writ of error is a writ of right, do humbly beseech your Lordships to take the premisses into consideration, and to give such directions thereupon, as to your Lordships shall seem just: And your petitioners do further pray, that your Lordships will be pleased to give the protection of this house to your petitioners council and agents, employed by them in the advising, applying for, and prosecuting the said writs of error; without which, they refuse to assist your petitioners.

*And your petitioners, as in duty bound, shall ever pray, &c.*

JOHN PATY  
*bis H mark.*

JOHN QVIAT  
*bis Q mark.*

The dates of the warrants annexed to the petition.

*Martis 5 die Decembris, 1704. for John Oviat.*

*Veneris 2 die Februarii, 1704. Ditto.*

*Martis 5 die Decembris, 1704. for John Paty.*

*Veneris 2 die Februarii, 1704. Ditto.*

The serjeant at arms being called upon to give an account what he had done pursuant to the orders of the house on *Monday* last, since the account he gave yesterday.

He gave the house an account accordingly;

That he had found *Mr. Denton* at his own chamber, and had him in custody; but that he could not find the other persons.

A message from the Lords, by *Mr. Justice Tracy*, and *Mr. Baron Smith*.

*Mr. Speaker,*

The Lords desire a present conference with this house in the painted chamber, about some antient fundamental liberties of the kingdom.

*Resolved,*

That this house doth agree to meet the Lords at a present conference as desired.

And the messengers were called in again, and *Mr. Speaker* acquainted them therewith.

Then managers were appointed, who went to the conference.

And being returned,

The Lord Marquis of *Hartington* reported the conference, and that it was managed by the Earl of *Sunderland*, who expressed himself as followeth.

*That*

*That the Lords have desired this conference with the House of Commons, in order to a good correspondence between the two houses, which they will always endeavour to preserve. When either House of Parliament have apprehended the proceedings of the other to be liable to exception, the ancient Parliamentary method has been to ask a conference, it being ever supposed, that when the matters are fairly laid open, and debated, that which may have been amiss will be rectified, or else the house that made the objections will be satisfied, that their complaint was not well grounded.*

*Such hopes as these have induced the Lords to command us to acquaint you, that upon the consideration of the petition of Daniel Horne, Henry Basse, and John Paton, Junior, and also of the petition of John Paty, and John Oviat, complaining to the House of Lords, that they have been prisoners in Newgate for about twelve weeks, upon several warrants, signed by the Speaker of the House of Commons, bearing date the 5th of December last, for their having commenced and prosecuted actions at common law, against the late constables of Aylesbury, for not allowing their votes, at an election of members to serve in Parliament; which actions, they alledged, they were encouraged to bring, by reason of a judgment given in Parliament upon a writ of error, brought in the last session by one Ashby, against White, and others; and also representing by the same petitions, what had been done by them respectively since their said commitment, in order to obtain their liberty, and praying the consideration of the House of Peers upon the whole matter; and also upon consideration of a printed paper, entitled, The Votes of the House of Commons, signed with the speaker's name, and dated the 24th of this instant February; the House of Lords found themselves obliged to come to several resolutions, which they have commanded us to communicate to you at this conference; and are as follows:*



1. It is resolved by the Lords Spiritual and Temporal in Parliament assembled, that neither House of Parliament hath any power, by any vote, or declaration, to create to themselves any new privilege, that is not warranted by the known laws and customs of Parliament.

*Resolved,*

2. That every freeman of *England*, who apprehends himself to be injured, has a right to seek redress by action at law; and that the commencing and prosecuting an action at common law, against any person (not entitled to privilege of Parliament,) is no breach of the privilege of Parliament.

*Resolved,*

3. That the House of Commons, in committing to *Newgate*, *Daniel Horne*, *Henry Basse*, and *John Paton*, Junior, *John Paty* and *John Oviat*, for commencing and prosecuting an action at common law, against the late constables of *Aylesbury*, for not allowing their votes in election of members to serve in Parliament, upon pretence that their so doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privilege of that house, have assumed to themselves alone a legislative power, by pretending to attribute the force of a law to their declaration, have claimed a jurisdiction, not warranted by the constitution, and have assumed a new privilege, to which they can shew no title by the law and custom of Parliament; and have thereby, as far as in them lies, subjected the rights of *Englishmen*, and the freedom of their persons, to the arbitrary votes of the House of Commons.

*Resolved,*

4. That every *Englishman*, who is imprisoned by any authority whatsoever, has an undoubted right, by

by his agents, or friends, to apply for, and obtain a writ of *Habeas Corpus*, in order to procure his liberty by the due course of law.

*Resolved,*

5. That for the House of Commons to censure, or punish any person, for assisting a prisoner to procure a writ of *Habeas Corpus*, or by vote, or otherwise, to deter men from soliciting, prosecuting, and pleading upon such writ of *Habeas Corpus*, in behalf of such prisoner, is an attempt of dangerous consequence, a breach of the many good statutes provided for the liberty of the subject, and of pernicious example, by denying the necessary assistance to the prisoner, upon a commitment of the House of Commons, which has ever been allowed upon all commitments by any authority whatsoever.

*Resolved,*

6. That a writ of error is not a writ of grace, but of right, and ought not to be denied to the subject, when duly applied for, (tho' at the request of either house of Parliament,) the denial thereof being an obstruction of justice, contrary to *Magna Charta*.

*In these resolutions, the House of Lords have expressed that regard and tenderness which they have always had, and will ever maintain for the rights of the people of England, and for the liberties of their persons; and also their zeal against all innovations to the prejudice of the known course of law, whereupon the happiness of our constitution depends; and they hope that, upon recollection, the House of Commons will be of the same opinion in all the particulars resolved by the Lords, and agree with their Lordships therein.*

*Ordered,*

That the said report be taken into consideration to morrow morning.

*Jovis 1 die Martii 1704.*

The house (according to order,) proceeded to take into consideration the report from the conference with the Lords yesterday.

*Ordered,*

That it be referred to the managers that managed the last conference, to draw up what is proper to be offered to the Lords at the next conference; and that they do withdraw into the speaker's chamber, and do sit *de die in diem*, and have power to send for persons, papers, and records.

*Sabbati 3 die Martii 1704.*

The Earl of *Dyſert* reported from the Committee appointed to examine what persons have been concerned in soliciting, prosecuting, or pleading upon the writs of *Habeas Corpus*, or writs of error, on the behalf of the persons committed to *Newgate*, for breach of the privileges of this house, or what other persons have promoted or abetted the same; that upon the examination of witnesses, it appeared to the Committee, that one Mr. — *Clifton*, being summoned to attend the said Committee, did not appear, tho' his wife owned he had the said summons, and told her he would attend accordingly. Mr. *Smith* one of the officers of the prison of *Newgate*, said, that the said Mr. *Clifton* used to come often to the prison, to visit the five prisoners committed thither by this house; and he has received from him about fifteen pounds for their lodgings, and about five pounds more of the Turnkey, that has been left with him upon the same account, by persons unknown to him. That there is nothing owing for their lodging, but since *Saturday* night: That they paid fifty shillings *per* week for their lodging, and

used to provide their diet from the sutler's. And that the Committee having issued out several summons for Mr. *Henry Cesar*, one of the Cursitors of *London* and *Middlesex*, to attend them, in order to give the Committee an account what persons had applied to him, to make out writs of error on the behalf of *John Oviat*, and the other prisoners lately committed by this house to *Newgate*; it appeared (upon the examination of *Kingham* the messenger, who served the said summons) that he left a copy of the summons on *Tuesday* night at Mr. *Cesar's* chamber at *Symonds-Inn*, with his landress, he not being within. That the said messenger, since, left a second summons at the said Mr. *Cesar's* chamber, who has not yet obeyed the same.

And a debate arising in the house upon the said report; and a motion being made, and the question being put, that the debate be adjourned?

It passed in the negative.

*Resolved,*

That it appears to this house, that Mr. *Clifton* having been summoned to attend a Committee of this house, and not attending thereupon, is guilty of a contempt and of a breach of the privilege of this house.

*Ordered,*

That the said Mr. *Clifton* be, for his said contempt and breach of privilege, taken into the custody of the serjeant at arms attending this house.

*Resolved,*

That it appears to this house, that Mr. *Henry Cesar*, one of the Cursitors of *London* and *Middlesex*, having been summoned to attend a Committee of this house, and not attending thereupon, is guilty of a contempt, and of a breach of the privilege of this house.



Ordered,

That the said Mr. *Henry Cesar* be, for his said contempt and breach of privilege, taken into the custody of the Serjeant at Arms attending this house.

*Martis 6 die Martii, 1704.*

The Serjeant at Arms attending this house acquainted the house, that a person had this morning brought him a writ of *Habeas Corpus*, under the great seal, for Mr. *Mountague* (in his custody by order of this house) to be brought (as he was informed) before the Lord Keeper of the great seal of *England*: And he delivered the writ (under seal) in at the table. And it appearing by the label to be returnable *immediate*, but not before whom he was to be brought, nor any Officer's name thereto, the writ was opened by the clerk, and read, and is as followeth.

*Anna dei gratia Ang' Sca' Franc' & Hibern' Regina, fidei defensor, &c. Samueli Powel Ar' serv' ad arma attenden' Honorab' Dom' commun' ejus deputato & deputatis salutem. Precipimus vobis & cuilibet vestrum quod corpus Jacobi Mountague Ar' nuper capt' & in custod' vestra vel alcujus vel unius vestrum ut dicitur deteni' sub salvo & securo conduci' una cum die & causa captionis & detentionis pred' Jacobi Mountague quocunque nomine idem Jacob' Mountague censeatur in eadem habeatis seu aliquis vel unus vestrum habeat cor' predilecto & fidel' nostro prebonorab' Nathan Wright Mil' Dom' custod' Mag' sigil' nostri Angl' apud Dom' Mansional' suam in parochia sancti Egidii in campis in com' Mid' immediate post reception' hujus brevis ad faciend' subjiciend' & recipiend' ea omnia & singula que dictus dominus custos magni sigil' nostri Angl' de eo ad tunc ibidem cons' in hac parte & habeatis seu*

*ſeu aliquis vel unus veſtrum habeat ibi hoc breve. Teſte  
meiſſa apud Weſtm' ſexto die Martii Anno regni noſtri  
tertio.*

The Label.

*Samuel Powel Ar' ſervien' ad arma, &c. H. corp'  
pro Mountague Ar' R. immediatè.*

Endorſed, *Per ſtatutem triceſim' prim' Caroli ſecundi  
Regis.*

N. WRIGHT, C. S.

The Serjeant alſo acquainted the houſe, that he heard there was another *Habeas Corpus* granted for Mr. *Denton*, in his cuſtody alſo.

While the matter (upon occaſion of the ſaid fore-mentioned writ) was debating, the Serjeant acquainted the houſe, that the other writ of *Habeas Corpus*, was juſt ſerved upon his deputy, who had Mr. *Denton* in his cuſtody: And he alſo delivered the ſame in at the clerk's table, where it was read; and was the ſame, *mutatis mutandis*, with the former.

And the precedents of what was done in the year 1675 were (by order) read: And ſeveral members mentioned, upon their memory, what was done in the year 1680, in the caſe of one Mr. *Sberidon*.

But the houſe were of opinion, that any perſon committed by the Houſe of Commons was not bailable, within the act of *Habeas Corpus* of 31 Car. II. but came not then to any reſolution.

*Martis 6, die Martii, 1704.*

Mr. *Bromley* reported, from the Committee appointed to draw up what is proper to be offered to the Lords at the next conference, that they had drawn up the ſame accordingly, which they had directed him to report to the houſe; which he read in his place, and afterwards delivered in at the clerk's table, where the ſame was read, and (with ſome amend-

amendments) agreed unto by the house: and the same is as follows, *viz.*

The Commons have desired this conference with your Lordships, in order to preserve that good correspondence between the two houses, which the House of Commons shall always sincerely endeavour to maintain, and which is so particularly necessary at this time of common danger, that the Commons would not engage in any thing that looks like a dispute with your Lordships, were it not for the necessity of vindicating, from a manifest invasion, the privileges of all the Commons of *England*, (with which the House of Commons is entrusted) even those privileges which are essential not only to the well being, but to the very being of an House of Commons, and the preventing of the ill consequences of those misunderstandings, which, if they are not speedily removed, must otherwise interrupt the happy conclusion of this session, and the proceedings of all future Parliaments.

It was this consideration alone has so long prevailed with the House of Commons, not to insist on due reparation for those violent and unparliamentary attempts, made by your Lordships upon their rights and privileges, at the end of the last session of Parliament, but to apply themselves to the giving the speediest dispatch, to those supplies which her Majesty so earnestly recommended from the throne, which are so necessary to enable her Majesty to pursue the advantages that have been obtained against the common enemy, by the great and glorious successes of her Majesty's arms: And which are now delayed in your Lordships house, in so unusual a manner.

The Commons do agree to your Lordships, that when either house of Parliament have apprehended the proceedings of the other to be liable to exception, the ancient parliamentary method has often been to ask a conference; because it ought to be supposed, that when the matters are fairly laid open and

and debated, that which may have been amiss will be rectified, or else the house that made objections will be satisfied that their complaints was not well grounded. But your Lordships seem so little to desire to have matters fairly laid open and debated, that, to the great surprize of the Commons, when your Lordships have invited them to a conference, *about some antient fundamental liberties of the kingdom*, they found only the antient and fundamental rights of the House of Commons, and their proceedings, censured, and treated in a manner unknown to former Parliaments; and that your Lordships had anticipated all debates, by delivering positive resolutions; and these proceedings of your Lordships, grounded only upon the petitions of criminals, that had fallen under the just censure and displeasure of the Commons, and upon a printed paper, which was not regularly before your Lordships.

Tho' this manner of proceeding, as well as the matters of your Lordships resolutions, might have justified the House of Commons in refusing to continue conferences with your Lordships, as their predecessors have done upon less occasions; and tho' the Commons cannot submit their privileges to be determined or examined by your Lordships, upon any pretence whatsoever; yet, that nothing may be wanting on their part to induce your Lordships to retract these resolutions, they proceed to take them into their consideration.

Your Lordships first resolution is, *viz.*

That neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of Parliament.

As the Commons have guided themselves by this rule, in asserting their privileges, so they wish your Lordships had observed it in all your proceedings.



ings. This had entirely taken away all colour for disputes between her Majesty's two Houses of Parliament, and many just occasions of complaint from those the Commons represent. This would effectually put an end to that encroachment in judicature, so lately assumed by your Lordships, and so often complained of by the Commons; we mean the hearing of appeals from courts of equity, in your Lordships house. This would have hindred the bringing of original causes before your Lordships, and your unwarrantable proceedings upon the petition of *Thomas Lord Wharton*, complaining of an order of the court of *Exchequer*, bearing date the 15th of July, 1701. for filling the record of a survey of the honour of *Richmond* and Lordship of *Middleham* in the county of *York*; an attempt which (contrary to the antient legal judicature of Parliament heretofore exercised, for the relief of the subject oppressed by the power of the great men of the realm) was in favour of one of your own body, to suppress a publick record, which all her Majesty's subjects had an undoubted right to make use of; an attempt that tends to render all fines and recoveries, and other records (upon which estates and titles depend) precarious; and consequently subjects the rights and properties of all the Commons of *England* to an illegal and arbitrary power.

A due regard to the same rule, would have prevented your Lordships entertaining the petitions mentioned at the last conference, which set forth,

*That the Lords having given judgment in the case of Ashby and White, viz. That by the known laws of this kingdom, every freeholder, or other person, having a right to give his vote at the elections of members to serve in Parliament, and being wilfully denied or hindered so to do, by the officer who ought to receive the same, may maintain an action in the Queen's courts, against such officer, to assert his right and recover damages for the injury: The petitioners thereupon brought the like actions in their own cases.*

Whereby

Whereby an extrajudicial vote of your Lordships is stated as a judgment of Parliament, and standing law in that case, your Lordship having no foundation for the entertaining such petitions, unless, that after having assumed to yourselves the hearing of appeals from courts of equity, you would now bring appeals to your Lordships from the proceedings of the Commons, who are not accountable to your Lordships for them.

Your Lordships second resolution is,

That every freeman of *England*, who apprehends himself to be injured, has a right to seek redress by action at law: And that the commencing and prosecuting an action at common law, against any person (not intituled to privilege of Parliament) is no breach of the privilege of Parliament.

To which the Commons say that every freeman, and every subject of *England*, has a right to seek redress for an injury; but then such person must apply for that redress to the proper court, which hath by antient laws and usage the cognizance of such matters: For should your Lordships resolution be taken as an universal proposition, all distinction of the several courts, viz. common law, equity, ecclesiastical, admiralty, and other courts, will be destroyed; and in this confusion of jurisdiction, the high court of Parliament is involved in your Lordships resolution.

However, the Commons conceive it no wonder your Lordships should favour the universal proposition, that all rights whatsoever are to be redressed by actions at law, when your Lordships pretend to have the last resort in cases of Judicature by writs of error; so that your Lordships are, in this, only extending your own judicature, under the colour of a regard and tenderness for the rights of the people, and liberties of their persons.

The

The Commons are surprized to find your Lordships assert, that the commencing and prosecuting an action against a person, not intituled to privilege of Parliament, is no breach of the privilege of Parliament, since it is most certain, that to commence and prosecute an action which would bring any matter or cause solely cognizable in Parliament, to the examination and determination of any other court, is more destructive to the privileges of Parliament, than to commence and prosecute an action against a person only who is entitled to such privilege.

That some matters and causes are solely cognizable in Parliament, hath ever been allowed by the sage Judges of law, and is evident from many precedents; and to bring such causes to the determination of other courts, strikes at the very foundation of all Parliamentary jurisdiction, which is the only basis and support, even of that personal privilege to which the members of either House of Parliament are entitled; and consequently to commence and prosecute any action, whereby to draw such causes to the examination of any other courts, is equally a breach of the privilege of Parliament, whether the Defendant, against whom such action is brought, is entitled to the privilege of Parliament, or not, which, besides the nature and reason of the thing, is fully evident from the constant usage of each House of Parliament, in committing for contempts only against their respective bodies, as appears from many precedents upon the journals of both houses.

Your Lordships third resolution is this, *viz.*

That the House of Commons, in committing to *Newgate, Daniel Horne, Henry Basse, and John Paton, Junior, John Paty, and John Oviat*, for commencing and prosecuting an action at common law against the constables of *Ailesbury*, for not allowing their votes in election of members to serve in Parliament, upon pretence, that their so doing was contrary

rary to a declaration, a contempt of the jurisdiction, and a breach of the privilege of that house, have assumed to themselves alone a legislative authority, by pretending to attribute the force of a law to their declaration: have claimed a jurisdiction not warranted by the constitution, and have assumed a new privilege, to which they can shew no title, by the laws and customs of Parliament; and have thereby, as far as in them lies, subjected the rights of *Englishmen*, and the freedom of their persons, to the arbitrary votes of the House of Commons.

In answer to which, the Commons affirm, that the said commitment is justified by ancient precedents, and by the usage and customs of Parliament, which is the law of Parliament, and the rule by which either house ought to govern their proceedings; and that the terms of assuming to themselves alone a legislative authority, of attributing the force of law to their declaration, of claiming a jurisdiction not warranted by the constitution, of assuming a new privilege, to which they can shew no title by the law and custom of Parliament; and of arbitrary votes; are more applicable to this resolution of your Lordships, which hath no one precedent to justify it.

According to the known laws and usage of Parliament, it is the sole right of the Commons of *England*, in Parliament assembled, (except in cases otherwise provided for by act of Parliament,) to examine and determine all matters relating to the right of election of their own members.

And according to the known laws and usage of Parliament, neither the qualification of any elector, nor the right of any person elected, is cognizable, or determinable elsewhere, than before the Commons of *England* in Parliament assembled, excepting such cases as are especially provided for by act of Parliament.

*And*



*And were it otherwise*, the mayors, bailiffs, and other officers, who are obliged to take the poll at elections, and make a return thereupon, would be exposed to multiplicity of actions, vexatious suits, and unsupportable expences; and such officers would be subjected to different and independent jurisdictions, and inconsistent determinations, in the same case, without relief.

And the exercise of this power by the House of Commons, is warranted by a long uncontested possession, and confirmed by the act that passed 7 & 8 *Guil. III. cap. 7.* and the House of Commons must be owned to be the only jurisdiction that can allow the elector his vote, and settle and establish the right of it; the last determination in that house being, by the act of Parliament, declared to be the standing rule for the right of election in each respective place. Nor can any elector suffer either injury, or damage, by the officers denying his vote; for when the elector hath named the person he would have to represent him, his vote is effectually given, both as to his own right and privilege, and as it avails the candidate in his election; and is ever allowed, when it comes in question in the House of Commons, whether the officer had any regard to it or no.

In the beginning of the Parliament, held 28 *Eliz.* Mr. *Speaker* acquaints the House, that he had received by the Lord Chancellor, her Majesty's pleasure; That she was sorry the house was troubled, with the matter of determining the chusing and returning of Knights for the county of *Norfolk*: That it was improper for the house to meddle in it, which was proper for the Lord Chancellor, whence the writs issued out, and whether they were returnable: That her Majesty had appointed the Lord Chancellor to confer therein with the Judges; and, upon examining the same, to set down such course as to justice and right should appertain.

Nov. 9.

*Nov.* 9. A Committee was appointed to examine and state the circumstances of the return of the Knights for the county of *Norfolk*.

And on *Friday, Nov.* 11. Mr. *Cromwell* reports the case of the *Norfolk* election very largely, in which report are these resolutions.

1. That the said writ was executed.
2. That it was a pernicious precedent, that a new writ should issue without the order of this house.
3. That the discussing, or judging of this, and such like differences, only belonged to the said house.
4. That tho' the Lord Chancellor and Judges are competent Judges in their courts, they are not so in Parliament.
5. That it should be enter'd in the journal book of the house, that the first election is good; and that the Knights then chosen, were received and allowed as members of the house; not out of any respect the house had, or gave to the Lord Chancellor's judgment therein passed, but meerly by reason of the resolution of the house it self, by which the said election had been approved.

6. That there should be no message sent to the Lord Chancellor, not so much as to let him know what was done therein; because it was derogatory to the power and privilege of the said house.

It also appears, that Sir *Edmond Anderson*, Lord Chief Justice of the *Common Pleas*, was acquainted, that the explanation and ordering of the cause, appertained only to the censure of the House of Commons, not the Lord Chancellor and the Judges; and that they should take no notice of their having done any thing in it.

Accordingly Mr. *Farmer* and Mr. *Gresham* were received into the house, and took the oaths; being admitted only upon the censure of the house, not as allowed by the Lord Chancellor, or the Judges;

and so ordered to be set down and entered by the Clerk.

And this right of the Commons to determine their own elections, has never been disputed since the case of Sir *Francis Goodwin*, 1. *Jac.* I. when the Lords would have enquired into the proceedings of the House of Commons upon his election; but the Commons then told their Lordships, it did not stand with the honour of the house, to give account to their Lordships of any of their proceedings or doings.

And in the reasons of their proceedings in that case, which they laid by petition before the King, among other things, they say, they are a part of the body to make new laws; yet, for any matter or privileges of their house, they are, and ever have been, a court of themselves, of sufficient power to discern and determine without the Lords, as the Lords have always used to do theirs without them.

In which reasons, as well as in their apology afterwards to that Prince, the House of Commons did, above a hundred years since, so clearly, and with so much strength of reason, assert their right in the matter of the election of their members. The Commons think it their duty to resist all attempts whatsoever to invade them.

And upon this occasion, it may not be improper to cite the opinion the House of Commons had, of the Judges intermeddling in matters of their elections, as they have delivered it in the aforesaid apology, in these words, *viz.*

‘ Neither thought we, that the Judges opinions,  
 ‘ (which yet in due place we greatly reverence, be-  
 ‘ ing delivered with the common Law,) which ex-  
 ‘ tend only to inferior and standing courts, ought  
 ‘ to bring any prejudice to this high court of Par-  
 ‘ liament; whose power, being above the law, is

‘ not

‘ not founded on the common laws, but they have  
 ‘ their rights and privileges peculiar to themselves.

When the Earl of *Shaftsbury* was Lord Chancellor, writs was issued, during a prorogation of Parliament, for electing members in the room of those that were dead: The King himself was so cautious, as to the regularity of this proceeding, and had so much regard to the privileges of the house of Commons, that at the next session of Parliament, *Feb.* 5. 1672, he spoke to the Commons, from the Throne, in these words.

‘ One thing I forgot to mention, which happened  
 ‘ during this prorogation ; I did give orders for the  
 ‘ issuing some writs, for the election of members in-  
 ‘ stead of those that are dead, that the house might  
 ‘ be full at their meeting : And I am mistaken, if  
 ‘ this be not according to former precedents. But  
 ‘ I desire you will not fall to other business, ’till you  
 ‘ have examined that particular ; and I doubt not  
 ‘ but precedents will justify what is done ; I am as  
 ‘ careful of all your privileges, as of my own pre-  
 ‘ rogative.

*February 6, 1672.* The House of Commons took that matter into consideration ; and several precedents being cited, and the matter at large debated, and the general sense and opinion of the House being, ‘ that, during the continuance of the high court  
 ‘ of Parliament, the right and power of issuing writs  
 ‘ for electing members to serve in this house, in such  
 ‘ places as are vacant, is in this house, who are the  
 ‘ proper Judges also of elections, and returns of  
 ‘ their members.

*Thereupon it was resolved,*

‘ That all elections, upon the writs issued since the  
 ‘ last session, are void, and that Mr. Speaker do issue



‘ out his warrant to the Clerk of the crown, to make  
 ‘ out new writs for those places. *Which was done*  
 ‘ *accordingly.*

No other court than the House of Commons, hath ever had the determination of the elections, or any cognizance of such causes, except where by acts of Parliament directed: and such an action as that against the late Constables of *Aylesbury*, to bring the right of voting in an election, in question in the courts of law, is a new invention, never heard of before; which (as new devices in the law are generally attended with inconveniencies and absurdities) was plainly to subject the elections of all the members of the House of Commons to the determination of other courts.

This undoubted privilege and jurisdiction, the Commons think will warrant these commitments, if the late declaration, (which is agreeable to, and cannot lessen their antient right,) had never been made.

For it is the antient and undoubted right of the House of Commons to commit for breach of privilege: And instances of their committing persons, not members of the house, for breach of privilege, and that to any of her Majesty's prisons, are ancient, so many, and so well known to your Lordships, that the Commons think it needless to produce them.

And it being the privilege of the House of Commons, to have the sole examination and determination of all causes relating to their elections, as aforesaid:

It follows, that any attempt to draw any such causes to the determination of any other court, is a breach of the privilege of the House of Commons; for which, the person offending may be committed by the Commons.

And here we cannot but take notice of that unreasonable, as well as unnatural insinuation, whereby  
 your

your Lordships endeavour to separate the interest of the people from their representatives in Parliament, who pretend to no privileges, but upon their account, and for their benefit; and are sorry to say, they are thus severely reflected on by your Lordships, for no other reason, but for their interposing to preserve the rights of the people, and their liberties, from your Lordships arbitrary determinations.

Your Lordships fourth resolution, is,

‘ That every *Englishman*, who is imprisoned by any authority whatsoever, has an undoubted right, by his agents, or friends, to apply for, and obtain a writ of *Habeas Corpus*, in order, to procure his liberty by due course of law.

The Commons do not deny that every *Englishman*, who is imprisoned, by any authority whatsoever, has an undoubted right to apply, by his agents, or friends, in order to procure his liberty by due course of law: provided such application be made to the proper place, and in a proper manner: As upon the commitments of the House of Commons, (which sometimes are not, as other commitments, in order to bring to trial; but are, in cases of breach of privilege and contempt, the proper punishment of the House of Commons,) the application ought to be to that house.

The Commons are so willing to allow and encourage every *Englishman* to apply, by his friends, or agents, to obtain a writ of *Habeas Corpus*, in order to procure his liberty by due course of law, that they have not censured any person merely for applying for such writ of *Habeas Corpus*, even in cases where by due process of law, the prisoners cannot be discharged. For the Commons must observe, that in many cases, a prisoner cannot, upon a writ of *Habeas Corpus*, obtain his liberty; as in cases of commitment in execution, or for contempt

to any court of record, or by virtue of mesne process, or the like: And in the act of *Habeas Corpus*, several cases are expressly excepted; and that no person, committed for any contempt, or breach of the privilege, by the House of Commons, can be discharged upon a writ of *Habeas Corpus*, or by any other authority, than that of the house, during that session of Parliament, is plain from the following precedents.

23 *Maij*, 1 *Jac.* I.

*Jones*, the prisoner, to be sent for hither, and to attend his discharge from the house.

That the prisoner committed by us, cannot be taken from us, and committed by any other.

In *May* 1675, the House of Commons having resolved, that there lay no appeal to the judicature of the Lords, from courts of equity; and that no member of the house should prosecute any appeal from any court of equity, before the house of Lords; Serjeant *Pemberton*, Serjeant *Peck*, Sir *John Churchill*, and *Charles Porter*, Esq; were committed to the custody of the serjeant of the house, for a breach of privilege, in having been of council at the bar of the house of Lords, in the prosecution of a cause depending upon an appeal, wherein Mr. *Dalmahoy*, a member of the House of Commons, was concerned.

But the serjeant having been by force prevented keeping them in custody, the Commons did, the 4th of *June*, 1675, acquaint the Lords, at a conference, as followeth, *viz.*

We are further commanded to acquaint you, that the enlargement of the persons imprisoned by order of the House of Commons, by the Gentleman Usher of the black-rod; and the prohibition, with threats, to all officers, and other persons whatsoever, not to receive or detain them, is an apparent breach  
of

of the rights and privileges of the House of Commons. And they have therefore caused them to be retaken into the custody of the serjeant at arms, and have committed them to the *Tower*.

The said council were afterwards committed to the *Tower* for a breach of privilege, and contempt of the authority of the house: And the house being informed, that the Lords had ordered Writs of *Habeas Corpus* for bringing the Council to the bar of their house.

The Commons then passed the following resolutions

7 Junii, 1675.

*Resolved, Nemine contradicente,*

That no person, committed for breach of privilege by order of this house, ought to be discharged, during the session of Parliament, but by order, or warrant of this house.

*Resolved, Nemine contradicente,*

That the Lieutenant of the *Tower* in receiving and detaining in custody Sir *John Churchill*, Serjeant *Peck*, Serjeant *Pemberton*, and Mr. *Porter*, performed his duty according to law; and, for so doing, he shall have the assistance and protection of this house.

*Resolved, Nemine contradicente,*

That the Lieutenant of the *Tower*, in case he hath received, or shall receive any writ, warrant, order, or commandment, to remove or deliver any person or persons committed for breach of privilege, by any order or warrant of this house, shall not make any return thereof, or yield any obedience thereunto, before he hath first acquainted this house, and received their order and directions how to proceed therein.



*Ordered,*

That these resolutions be immediately sent to the Lieutenant of the *Tower*.

Afterwards the Lieutenant of the *Tower* gave the house an account, that he had refused to deliver the Council, upon the Lords order, signified to him by the black-rod, because they were committed by this house; and that after he had received the votes of this house, he had writs of *Habeas Corpus* brought him, to bring the Council to the house of Lords at ten o'clock the next morning, and humbly craved the direction of the house what to do.

Mr. Speaker intimated to him, *he should forbear to return the writs.*

And the house came to several other resolutions.

9 Junii, 1675.

*Resolved, Nemine contradicente,*

That no Commoner of *England*, committed by order or warrant of the House of Commons, for breach of privilege, or contempt of that house, ought, without order of that house, to be, by any writ of *Habeas Corpus* or other authority whatsoever, made to appear, and answer, and do, and receive a determination in the House of Peers, during the session of Parliament wherein such person was committed.

*Resolved, Nemine contradicente,*

That the order of the House of Peers, for the issuing out of writs of *Habeas Corpus* concerning Serjeant *Peck*, Sir *John Churchill*, Serjeant *Pemberton*, and Mr. *Charles Porter*, is insufficient and illegal; for that it is general, and expresses no particular cause of privilege, and commands the King's great seal to be put to writs not returnable before the the said House of Peers.

*Resolved,*

*Resolved, Nemine contradicente,*

That the Lord-keeper be acquainted with these resolutions, to the end that the said writ of *Habeas Corpus*, may be superseded, as contrary to the law and the privileges of this house.

*Resolved, Nemine contradicente,*

That a message be sent to the Lords, to acquaint them, that Serjeant *Peck*, Sir *John Churchurch*, Serjeant *Pemberton*, and Mr. *Charles Porter*, were committed by order and warrant of this house, for breach of the privilege, and contempt of the authority of this house.

22 Martii, 1697.

*Charles Duncomb*, Esq; having been committed by order of this house, and afterwards discharged by order of the House of Lords, without the consent of this house.

*Resolved,*

That no person committed by this house can, during the same session, be discharged by any other authority whatsoever.

*Resolved,*

That the said *Charles Duncomb* be taken into the custody of the serjeant at arms attending this house.

These are some instances, among many others, that might be produced upon this occasion; and the last cannot but be particularly remembred by some noble Lords that then sat in the House of Commons, and strenuously asserted this privilege of the Commons.

Your Lordships fifth resolution, viz.

*Resolved,*

‘ That for the House of Commons to censure or punish any person for assisting a prisoner to procure a writ of *Habeas Corpus*, or by vote, or otherwise, to deter men from soliciting, prosecuting, and pleading upon such writ of *Habeas Corpus*, in behalf

‘ half of such prisoner, is an attempt of dangerous  
 ‘ consequence, a breach of the many good statutes  
 ‘ provided for the liberty of the subject, and of pernicious  
 ‘ example, by denying the necessary assistance  
 ‘ to the prisoner, upon a commitment of the House  
 ‘ of Commons, which has ever been allowed upon  
 ‘ all commitments by any authority whatsoever.

The Commons take this to be another instance of your Lordships breach of your own rule, your Lordships being no judges of their privileges; tho’ by this resolution you seem to make a judgment without having heard, and knowing what the Commons have to alledge for them.

This attempt therefore in your Lordships is of dangerous consequence, tending to a breach of the good understanding between the two houses, and of most pernicious example. The Commons late proceeding, in censuring and punishing the council that have pleaded upon the return of the writs of *Habeas Corpus*, in behalf of the prisoners, if duly consider’d, is a great instance of the temper of the House of Commons: For this house did not interpose when the prisoners applied to the Lord Keeper, and the Judges, to be bailed; and had the lawyers shewn so much modesty, as to have acquiesced in the opinion of the Lord Keeper and all the Judges, that these prisoners were notailable by the statute of *Habeas Corpus*, the Commons had never taken any notice of it: But they would not rest satisfied without bringing on again this case; and the privileges of the Commons were, with great licentiousness of speech, denied, and insulted in publick court; not with any hope or prospect of relief of the prisoners, (who in this whole proceeding have apparently been only the tools of some ill-designing persons, that are contriving every way to disturb the freedom of the Commons elections) but in order to vent these new doctrines against the Commons of *England*, and with a design to overthrow their fundamental right,

right. And after so much inveteracy shewn to the Commons, they could do no less than declare the abettors, promoters, countenancers, or assisters, of a prosecution so carried on, to be guilty of conspiring to make a difference between the two Houses of Parliament, to be disturbers of the peace of the kingdom; and to have endeavoured, as far as in them lay, to overthrow the rights and privileges of the Commons of England in Parliament assembled.

And the Commons, in committing the lawyers, have only done that right to their body which your Lordships have frequently practised, in cases of personal privilege, where any single member of your Lordships house is concerned.

Your Lordships last resolution, *viz.*

‘ That a writ of error is not a writ of grace, but of right, and ought not to be denied to the subject, when duly applied for; (tho’ at the request of either House of Parliament) the denial thereof being an obstruction of justice, contrary to *Magna Charta*.

The Commons shall not enter into any consideration, whether a writ of error is of right, or of grace; they conceiving it not material in this case, in which no writ of error lies, nor was ever any writ of error brought or attempted in the like case before; and the allowing it in such cases would not only subject all the privileges of the House of Commons, but the liberties of all the people of *England*, to the will and pleasure of the House of Lords.

And when your Lordships exercise of judicature upon writs of error is considered, how unaccountable in its foundation; how inconsistent is it with our constitution, which, in all other respects, is the wisest and happiest in the world, to suppose the last resort in judicature and the legislative to be differently placed?

And when it is considered how that usurpation, in bearing of appeals from courts of equity, so easily traced,



traced, tho' often denied and protested against, yet still exercised, and almost every session of Parliament extended, it is not to be wondered, that after the success your Lordships have had in those great advances upon our constitution, you should now at once make an attempt upon the whole frame of it, by drawing the choice of the Commons representatives to your determination; for that is a necessary consequence, from your Lordships encouraging the late actions, and your countenancing a *writ of error*; which if allowed upon such a proceeding, might as well be introduced upon all acts and proceedings of courts or magistrates of justice: And tho' the present instance has been brought on under the specious pretence of preserving liberty, it is obvious the same will as well hold to controul the bailing and discharging prisoners in all cases.

And the Commons cannot but see how your Lordships are contriving, by all methods, to bring the determination of liberty and property, into the *bottomless and insatiable gulph of your Lordships judicature*, which would swallow up both the prerogatives of the crown, and the rights and liberties of the people; and which your Lordships must give the Commons leave to say, they have the greater reason to dread, when they consider in what manner it has been exercised; *The instances whereof they forbear, because they hope your Lordships will reform; and they desire rather to compose the old; than to create any new differences.*

Upon the whole, the Commons hope, that upon due consideration of what they have laid before your Lordships, you will be fully satisfied they have acted nothing in all these proceedings, but what they are sufficiently justified in from precedents, and the known laws and customs of Parliament; and that your Lordships have assumed and exercised judicature contrary to the known laws and customs of Parliament, and tending to the  
 overthrow

overthrow of the rights and liberties of the people of *England*.

*Resolved,*

That a conference be desired with the Lords, upon the subject matter of the last conference.

*Ordered,*

That Mr. *Aislaby* do go to the Lords, and desire the said conference.

*Mercurii 7 die Martii, 1704.*

Mr. *Aislaby* reported, that he having been at the Lords (according to the order yesterday) to desire a conference upon the subject matter of the last conference, the Lords return an answer,

That they do agree to a conference accordingly, and appoint the same presently in the painted chamber.

*Ordered,*

That the managers who managed the last conference, do manage the conference which is to be presently with the Lords.

And the managers went to the conference.

And being returned,

Mr. *Bromley* reported, that they had been at the conference, and delivered to the Lords what the house had directed.

A message from the Lords by Sir *Richard Holford* and Mr. *Pitt*. Mr. Speaker, the Lords desire a free conference with this house to morrow at one of the clock, in the painted chamber, upon the subject matter of the last conference.

*Resolved,*

That this house will send to the Lords an answer by messengers of their own.

And

And the messengers were called in again; and Mr. Speaker acquainted them therewith.

*Jovis 8 die Martii, 1704. Anno 4 Annæ Reginae.*

*Resolved,*

That a message be sent to the Lords to acquaint them, that when their Lordships had sent yesterday in the afternoon, after three o'clock, to desire a free conference upon the subject matter of the last conference, the house was just rising; but that this house will meet their Lordships at a free conference, as their Lordships have desired, at such a time as their Lordships shall appoint, the time named yesterday by their Lordships being now past.

*Ordered,*

That Sir *Thomas Hanmer* do carry the said message.

*Ordered,*

That the managers who managed the last conference, do manage the said free conference: And some others were added to them.

Sir *Thomas Hanmer* reported, that he having been at the House of Lords, to deliver the message directed by this house, he found that the Lords were just up.

The serjeant at arms, attending this house, having acquainted the house, that he had received two writs of *Habeas Corpus* under the great seal of *England*, to bring before the Lord Keeper the bodies of *James Mountague*, Esq; and *Alexander Denton*, Esq; (who are committed to his custody by warrants from the speaker of this house for a breach of privilege.)

The house again assumed the consideration of that matter: And after debate.

*Resolved,*

*Resolved,*

That no commoner of *England*, committed by the House of Commons for breach of privilege, or contempt of that house, ought to be, by any writ of *Habeas Corpus*, made to appear in any other place, or before any other judicature, during that session of Parliament wherein such person was so committed.

*Resolved,*

That the serjeant at arms attending this house, do make no return of, or yield any obedience to the said writs of *Habeas Corpus*; and for such his refusal, that he have the protection of the House of Commons.

*Resolved,*

That the Lord Keeper be acquainted with the said resolutions, to the end, that the said writs of *Habeas Corpus* may be superseded, as contrary to law, and the privileges of this house.

*Ordered,*

That the clerk of this house do acquaint the Lord Keeper of the great seal of *England* with the said resolutions.

*Veneris 9 die Martii, 1704.*

The clerk acquainted the house, that he did, pursuant to their commands last night, wait upon the right honourable the Lord Keeper of the great seal of *England*, and acquaint his Lordship with the resolutions of the house yesterday, relating to the writs of *Habeas Corpus*; and left the resolutions with his Lordship.

Sir *Thomas Hanmer* reported, that he having been at the Lords with the message ordered yesterday, the Lords do return an answer, that they do agree to



to meet this house at a free conference this day, at two o'clock, in the painted chamber.

Then the managers went to the free conference.

And being returned,

Mr. *Bromley* reported, that the managers appointed had met the Lords at the free conference, which had lasted very long; and that when the managers for the Commons took notice of some invasions of the House of Lords in point of judicature, particularly as to appeals, the Lords broke up the conference.

*Ordered,*

That the managers do draw up what had passed at the conference, and lay the same before the house with all convenient speed.

*Martis 13 die Martii, 1704.*

Mr. *Bromley* reported, that the managers of the free conference with the Lords, had (according to order) drawn up what had passed at the said conference, which they had directed him to report to the house, which he read in his place, and afterwards delivered in at the clerk's table.

*Ordered,*

That the said report be entered upon the journals, and is as followeth, *viz.*

That the Lords who appeared as managers, and spoke at this free conference, were, the Earl of *Sunderland*, the Lord *Ferrers*, the Bishop of *Salisbury*, the Lord *Halifax*, the Lord *Wharton*, and the Duke of *Devonshire*, Lord Steward.

That the free conference was begun by the managers for the Lords, who said, this conference was desired to maintain a good correspondence between the

the two houses, which was never more necessary than at this time.

That the delivering resolutions at their first conference was parliamentary; and instanced the resolutions 3 *Car.* I. which produced the petition of right.

That the Lords look upon the Commons to be a great part of the constitution, which cannot be preserved but by doing right to both houses.

That every part of the body politick, as well as the body natural, ought to be kept within due bounds; an excess in any member will weaken the whole.

That this constitution is the wonder of the world, and glory of this nation; 'tis founded upon liberty and property: And the House of Commons hath been a great fence and bulwark of liberty.

That the Lords resolutions are very well founded, and justified by the laws of the land, as is their judicature in this case.

That it was proper for them to receive the petitions, and make these resolutions thereupon.

That the Lords are the great court of judicature; and when the courts below have differed in opinion, there has been resort to the Lords for their judgment, as in the case of kindred of half blood claiming shares of intestates estates.

That when such a complaint comes before the Lords, they ought to give their opinion as to the law of the land; and that was the foundation of their present resolutions.

1. That the first resolution was, in effect, agreed to by the Commons, tho' they go off to foreign matters, of which the Lords take no notice.

That the law of the land can be altered only by the legislature.

2. That the second resolution asserts the subjects redress by action at law, &c.

That all constitutions have reckoned this their safety, that every man, from the highest to the lowest, hath the protection of the law.

That according to our constitution, the subject may contest his right with the crown, and upon equal terms, with that respect which is due.

That this resolution only asserts the right, does not state the respective courts, where the redress is to be had: If the party mistakes the court, he is punished by costs of suit.

The term of privileged causes is new, and the distinction unknown.

3. To support the said resolution, it was urged,

That the breach of privilege was not well grounded.

That it belongs to the crown to make declarations; the Commons did indeed make ordinances; and when their Prince was murdered, they came to declarations.

That a law, without promulgation, cannot have force to make an offence.

The liberty of men's persons is the greatest privilege, and not to be taken away, but in known cases; the invading of it has shook the best constitutions.

That the taking away the liberty of one mean person, once endangered the government of *Rome*.

That both houses may commit for breach of privilege, but cannot declare any thing to be a privilege, without good grounds, nor consequently make any thing a contempt, that is not known to be so.

That commitments, or censures, have not been usual upon actions at law, tho' such actions have brought the proceedings or privileges of either house in question.

That in the case of freedom of speech, which is the greatest privilege, there was a judgment in King *Charles* the first's reign, in the heat of those times, against some members, for speeches in Parliament:

This

This the Commons first condemned; and then by conference brought it before the Lords, who came to a resolution, that it was erroneous, and desired the Lord *Hollis* to bring his writ of error; and thereupon it was reversed by the Lords, in the time of *Charles* the second; which shews the care the Lords had of the Commons privileges.

That in *Soame* and *Barnardiston's* case, the Commons did not concern themselves, only in support of the action, when in 1678, they examined the judgment of reversals as a grievance.

That the Lords had not interposed in any suits, which concerned the proceedings of their house.

That the Earl of *Banbury* (as he was called) was, by the Lords, adjudged to be no Peer: This was examined in the *King's-Bench*, where, in abatement of an indictment of murder against him, as *Charles Knolles*, Esq; he pleaded his title of an Earl; and in avoidance of that, the order of the Lords was replied, and was examined by the court, and disallowed.

That the late Bishop of *St. David's* was prosecuted in the spiritual court, and deprived, tho' a member of that house; and the Lords did not interpose.

That it is the wisdom of all governments, to have the law open; and that's the difference between a legal and an arbitrary government.

That the Lords do not meddle with the Commons right of determining their own elections; they have a settled possession of it, which is a right: But if all the rights of subjects concerned in those elections are to be determined there, that will bring all questions of freehold, and the allowance of all charters, and all liberty and property before them.

That a freeholder of forty shillings *per annum* has a right of inheritance, to which he is born; and if his vote is denied, he is damnified, and loses the credit of his vote; and if he shall only come to the



House of Commons, they can neither give him damages nor costs of suit.

That a freehold cannot be determined by any court which cannot give an oath.

That the precedents produced concern only the right of determining elections in general.

And an action by an elector, for his right of voting, does not avoid the election.

4. To maintain the fourth resolution, they said,

That it may be lawful for a man to apply for his liberty, when he cannot have it.

That the proceedings in 1675, produced as a precedent in this case, were upon a matter contested between the two houses, and resolved differently in the Lords House: *Topham* and the Lieutenant of the *Tower* were both turned out; and the ferment was so high, that the Parliament was prorogued, and soon after dissolved.

The fifth resolution is a consequence of the fourth :

That the commitment of the lawyers was not for licentious speech, as was insinuated at the last conference, but for pleading upon the return of the writs of *Habeas Corpus*.

That 'tis the particular character of that odious court called the *Inquisition*, that no body dares appear for, or resort to a person imprisoned there, but he is left to the mercy of that court.

The lawyers are not to be answerable for every thing they argue; they are to do their duty for their clients, and the court is to judge of it.

6. The Commons declining the last resolution is an agreeing to it, though not so parliamentary as it would have been to have agreed to it directly.

That the Lords are the only proper Judges, whether the writ of error lies before them.

*To these arguments the managers for the Commons answered:*

That they agreed the necessity of a good correspondence between the two houses, especially at this time of common danger; and that the Commons had fully shewn their desire to maintain that good correspondence, by condescending to meet their Lordships at this free conference, altho' their antient and fundamental privileges had been called in question, and denied by their Lordships, and that in an extraordinary and very unparliamentary manner.

That the delivery of resolutions is so far from being the only method of conferences, that the more usual method has been to offer reasons, without resolutions; and it would be very difficult to give any instance (before this) of either house delivering positive resolutions at a conference, without the reasons, at the same time, to support them, and that induce them to make such resolutions.

1. That the Commons answer to the Lords first resolution, is not foreign to the subject-matter of the conference: Because the Commons apprehended the subject-matter to be their Lordships denying the privileges of the Commons, on the one hand, and their extending their own judicature beyond its proper limits, on the other: And therefore the Commons could not but take notice, how far their Lordships had transgressed in the exercise of an unwarrantable judicature, in contradiction to that very rule they had laid down for the test of the proceedings of the Commons, and by which the Commons had strictly governed themselves.

That the Commons cannot create new privileges; yet in *Cooke's* 13 reports, fo. 63. 'tis said, the privilege of Parliament, either of the upper house, or of the House of Commons, belongs to the determination or decision only of the court of Parliament, for every

court hath a right to adjudge their own privileges, according to the book of *Ed. 4.* Sir *John Paston's* case.

2. To their Lordships arguments for their second resolution your managers answered :

That every person injured, hath a right to seek redress ; but then that redress must be sought in the place where the matter is properly cognizable.

3. To what the Lords offered upon the third resolution, your managers answered :

That matters of election do not belong to the courts below, but only to the House of Commons, which hath been in long possession of them: That there was an act of Parliament made in the time of King *Henry* the sixth, to give an action for a false return of members to serve in Parliament, because no such action lay at common law, it relating to elections.

That double returns not being within that statute, no action lay in the courts of common law, for making any double return, 'till the statute 7 and 8 *William III.*

That besides the instances given, in the answers the Commons gave to the Lords resolutions, at the last conference, this distinction, as to privileged cases, is fully and undeniably warranted by the statute made in the first year of King *William* and Queen *Mary*, entitled, *An act declaring the rights and liberties of the subject, and settling the succession of the crown* ; where, among other endeavours of the late King *James*, to subvert and extirpate the laws and liberties of the kingdom, these are mentioned, *by violating the freedom of election of members to serve in Parliament, and prosecutions in the court of King's-Bench, for matters and causes only cognizable in Parliament.*

Besides, that there are privileged cases as well as privileged persons, appears from hence : A prohibition, and afterwards attachment, lies, for suing  
in

in the spiritual court for a temporal cause determinable in the temporal court. There are divers laws within this realm, of which the common law is but one, as appears in *Cooke's 1 Inst. Fo. 2. B.* where he mentions *Lex & consuetudo Parliamenti*, & *lex communis*, as distinct laws.

As there are several laws, so there are several courts and jurisdictions, and several causes proper for those several laws and several jurisdictions: Of these the high court of Parliament is the first: *Lex & consuetudo Parliamenti* is a great branch of the law of *England*; and many causes are to be determined only by that law, as appears in the *Inst. Fo. 23.*

With such causes as are in their nature parliamentary, and to be determined by the law of Parliament, the common law, and common law Judges have nothing to do; as further appears, *4 Inst. Fo. 14, 15.* where the expressions are very suitable to the present controversies.

That the persons persisting in the prosecution of such actions, after a prohibition by the Commons, for that such causes belong to their jurisdiction, the committing them for the breach of their privileges in that particular, is no more than is done by the common law courts for a like contempt, when persons will sue after a prohibition to the spiritual courts: And the Commons usual way to defend their privileges against such invasions, has been by committing the tools and instruments thereof.

It is a fundamental maxim of the law and custom of Parliament, which is the highest and noblest part of the law of *England*, and particularly adapted to the preservation of the liberties of this kingdom, that the two houses are independent of one another, and sole Judges of their rights and privileges: That their Lordships did admit, the Commons have a privilege to judge of the rights of their own elections, to one intent, but not to another: But if the Com-



mons have such a privilege to one intent, they must be Judges of it to all intents and purposes whatsoever; and being sole Judges thereof, their judgment cannot be legally called in question, either by writs of *Habeas Corpus*, writs of error, or otherwise, in any other court; and consequently the proceedings in *Westminster-hall*, and in the House of Peers, and the judgment given there, are all null and void, & *coram non judice*.

The Commons commitment for commencing these actions, is no more than what they and their predecessors have in all times practised, in cases of breach of privilege.

4. In answer to what the Lords had offered upon the fourth resolution, your managers insisted, that application of friends for the liberty of any person imprisoned, ought to be in a proper place, and in a proper manner, which in this case ought to have been only to the House of Commons, and by the petitions of the persons they had committed.

That the proceedings in 1675, were so well grounded, that they must be precedents to the Commons to follow at all times upon the like occasions.

5. To what the Lords offered upon the fifth resolution, your managers answered;

The licentiousness of speech used by the lawyers, was only mentioned among other particulars of the provocations they gave the House of Commons; but they were committed for pleading upon the returns of the writs of *Habeas Corpus*, in behalf of the prisoners committed by the House of Commons, which the Commons (who are the only Judges of their own privileges) take to be a great breach of the privilege of their house.

6. To the last resolution your managers insisted, that no writ of error lies in that case; and that there may be cases wherein no writ of error lies, was their Lordships opinion in the case of the late Bishop of *St. David's*, who brought his writ of  
error

error upon the courts not granting him a prohibition.

The case of Sir *Thomas Armstrong*, mentioned by their Lordships, was particular, in that the Commons then apprehended he was intitled to a writ of error, within the meaning of the statute of *Edward* the sixth.

Your managers further urged the novelty of the action in the case of *Asbby* and *White*, of which no footsteps can be found in any book of the law, or in any record, although we have faithful reports of all memorable caies for four hundred years past; and the occasion of such an action must frequently have happened.

The Lords themselves (when they had no design upon the privileges of the Commons) were of opinion, in the case of Sir *Samuel Barnardiston*, in the first year of the reign of King *William*, that no such action lay; and there is no reason can be offered to maintain this action, but held more strongly in the case of Sir *Samuel Barnardiston*, as damages, costs, &c. And it is an absurd distinction to say, that in this case the right of election cannot come in question, because the determining of the right of the electors doth generally determine the right of the elected; and almost all controverted elections depend upon the qualifications of the electors.

That the Commons had shewn such a disposition to maintain a good correspondence with their Lordships, though their Lordships in the case of *Asbby* and *White*, had, contrary to the judgment of the courts below, allowed the action, upon which the Plaintiff had taken out execution, and levied the money; that the Commons took no notice of it, and were willing to let the matter fall, which might occasion any contest in this time of publick danger: But when other actions of the like nature were still commenced and prosecuted, whereby all elections would be brought to the determination of the Lords,  
or,

or, at least, in time so influenced, as that the Lords would in effect chuse the Commons, and thereby the independency of the two houses would be destroyed, which is the great safety of the constitution; then it concerned the Commons, who are the representatives of the people, to oppose what would be so fatal to our constitution.

The bringing writs of *Habeas Corpus* upon the commitments of the Commons, and a writ of error thereupon before the Lords, would bring all the privileges of the Commons to be determined by the Judges, and afterwards by the Lords, upon such writs of error.

Nay, such writs of error upon every *Habeas Corpus*, would bring the liberty of every Commoner in *England*, to the arbitrary disposition of the House of Lords.

And if a writ of error cannot be denied in any case, and the Lords alone are to judge whether the case be proper for a writ of error, then all the Queen's revenue, all her prerogatives, and all the lives and liberties of the people of *England*, will be in the hands of the Lords, for every felon, burglar, and traitor, will be entitled to a writ of error before the Lords; and they will have even power of life and death.

And by writs of error and appeals, as already exercised, they will have all our properties; by such new-invented action they will have all our elections; and by such writs of *Habeas Corpus*, and writs of error thereupon, they will have all our privileges, liberties, and even lives, at their determination; who determine by vote, with their doors shut, and it is not certainly known who it is that hurts you.

The novelty of those things, and the infinite consequences of them, is the greatest argument in law, that they are not of right.

The Commons are not contending for a small thing, but for their all:

Especially

Especially since the Lords have found out a way to distress the government, by detaining the money given by the Commons, which must come last to them, because the money-bills must begin with the Commoners; and if by that means they can extort writs of error where they never were heard of, the Commons must commit the persons employed in all such innovations, or else they must lose, by such contrivances, all that they have.

In the case of *Denzil Holles*, Sir *John Elliot*, &c. in 1667, the Commons declared the judgment given in 5 *Car. I.* to be an illegal judgment, and against the privilege of Parliament; and this they did of themselves, before they acquainted the Lords therewith.

Afterwards, because it concerned the Lords as well as the Commons, they imparted their resolutions, to the Lords, who concurred with the Commons; and the writ of error, which was afterwards brought at the desire and instance of the Lords, and not at all by the desire of the Commons, they rested upon their own resolution, that it was an illegal judgment.

The Lords, by way of reply, said further, that this is a cause of liberty and property, and judicial proceedings, which the Commons had endeavoured to stop.

That the conference therefore, asked by the Lords, upon the fundamental rights and liberties, was proper.

That they are the same terms the Commons used, 3 *Car.* when their liberties were attack'd.

That the true method of conference is not by way of question and answer, but by resolutions; which are not so binding, but if the Lords are convinced by arguments, they may retract them.

That the Lords, sure, may regularly take notice of this printed paper, when it contains such declaration, as all persons are bound to take notice of at the peril of commitment.

That



That the right of the House of Commons to determine their own elections is not in question, or intended to be changed; but the two precedents produced to support them are very much mistaken.

That the case of Sir *Francis Goodwin* is not fairly stated, the word *order* being omitted in the Commons answer to the Lords message, relating to the Commons proceedings in this case; which refers to a particular order of the House of Commons, they having before determined that election. That it is not taken notice that the Lords went with the Commons to the King, and were mediators; and that at the last a new writ issued for a new election.

That in the stating the precedent 28 *Eliz.* the Commons have not taken notice, that the election was in that case determined by the Judges.

That the Commons did not confine their resolution to *Armstrong's* case; But it is general and absolute, that a writ of error in felony or treason, is of right and not of grace.

That by the writ of error brought in the late bishop of St. *David's* case, upon the denial of a prohibition, and disallowed by the Lords, it appears, when a record comes improperly before them, they are so just as to dismiss it.

That, instead, of proving the law, the consequences are urged, which is not right arguing.

That the question is, whether the Queen is bound to grant a writ of error? If she is, it will be hard for any body of men to interpose with the crown, and stop it, to hinder that *Fiat*, which by the opinion of the Judges, she ought to give.

She is obliged too, by *Magna Charta*: *Nulli negabimus, nulli deferemus, Justitiam.*

That whether a writ of error lies or not, will afterwards be proper for the judgment of this court, as 'tis of any other court where a writ of error is returnable.

That

That the Commons are very safe, and may depend the Lords will be as tender of their privileges as of their own.

That whatever privileges accrue to the Commons, will accrue to the Lords also: If the commitments of the Commons are free from the cognizance of the courts below, those of the Lords will be so too.

That 3 *Car.* the Commons maintained, that the measure of persons beingailable, is not from the authority which committed, but from the cause of commitment.

Your managers further observed, this subject matter was scarce ever in conference before, between the Lords and Commons, and will seem strange to posterity.

That the Lords concern for liberty and property cannot be equal with that of the Commons; for the Lords liberty is better fenced, and consequently their property too, than that of the Commons.

The Lords are less interested in the event of this conference than the Commons, who are the trustees of those who sent them, and are bound in duty and interest to preserve their liberty and property; and having but a triennial duration, which is at this time near expiring, it is not to be imagined they will infringe what they are entrusted with, and so much concerned to maintain; and that so notoriously, that the Lords should complain, who are much less concerned, but more to be feared, as their designs as well as honour may be hereditary.

At the first conference, six resolutions were delivered, as matters of undoubted truth and law.

And the proceedings of the Commons are to be tried by these rules, though they were no parties to the making them.

1. The first is not to be excepted against; only is an insinuation, as if the Commons had practised the contrary, which they are not conscious of.

2. To

2. To the second, there are many injuries for which no action at law is allowed; as if a Judge gives a wrong judgment, the redress by writ of error is no satisfaction for the damage.

So for other acts of a Judge, or court of Justice, as denying a writ of *Habeas Corpus*, or bail, no action lies, but upon the late statute.

That their Lordships, not making any distinction between matters and causes, which were exempt from the cognizance of the common law courts, as being solely cognizable in Parliament, and causes which were exempt only in respect of the persons sued, being intitled to privilege of Parliament, seems to be the occasion of the mistakes their Lordships have entertained, in relation to the proceedings of the Commons; that the House of Commons is a court of judicature in many respects; and as such, hath, as well as other courts, causes proper and peculiar to its jurisdiction.

That the law books, and particularly the Lord Cook, speak of matters of Parliament which *are not to be determined by the common law, but according to the law and usage of Parliament.*

That *all matters moved, or done in Parliament, must be questioned and determined there, and not elsewhere*, has been heretofore asserted by the House of Commons, as their antient and undoubted right, and has been allowed both by the Judges of law, and by their Lordships. And when the Judges of the *King's-Bench*, in the fifth year of King Charles the first, upon an information against Sir John Elliot, Mr. Hollis, and others, held, *that matters done in the House of Commons, if not done in a parliamentary way, might be questioned elsewhere*; that judgment was afterwards reversed in Parliament.

That their Lordships allowed all matters relating to elections, ought to be determined solely by the Commons: And tho' their Lordships attempted to make a distinction between the right of elections, and

and the right of electors, yet their Lordships cannot find room for such a distinction, unless they would say, the right and qualification of the electors was a matter not relating to elections.

That by the Parliament rolls, 11 *Rich. II.* it appears a petition was exhibited by Parliament, and allowed by the King, *that the liberties and privileges of Parliament should be discussed by the Parliament, and not by any other courts, nor by common or civil law*; and therefore when the Judges have been asked their opinions in matters of Parliament, they have answered, *that the privileges of Parliament ought to be determined there, and not by any other*; as they did in the case of *Thorp*, Speaker of the House of Commons, 31 *H. VI.*

That these matters are not exempt from the determination of other courts, in respect of the persons sued; for then they might be determined there after the time of privilege was expired; whereas it is evident, that such matters and causes cannot be determined, in any other court than that of the Parliament, after the expiration of the time of privilege, any more than before.

That these matters are determinable in Parliament, although the persons prosecuted are not entitled to the privilege of Parliament, as appears by many instances, particularly by that of the Mayor of *Westbury*, in the eighth year of Queen *Elizabeth*, who, for taking *four pounds* to get a person elected a Burgess for that borough, was fined and imprisoned by the *House of Commons*, although he was not a person entitled to the privilege of Parliament.

That it may be as well said, that an action is maintainable for refusing any of the Lords a right of precedency in Parliament; yet it cannot be imagined the House of Peers would be content the same should be brought in question, in any the courts of law, and decided by a Jury of Commoners.

But



But the same arguments will hold for maintaining such an action, to recover damage for refusing precedence to him that hath right to it, as for maintaining an action to recover damages, for refusing to take down upon the poll the vote of an elector: For it may with equal reason be said in both causes, that the plaintiff hath a right, that the defendant refused him that right, that such refusal is an injury, and consequently ought to be repaired in damages.

3. As to the third resolution, the Commons are not accountable to the House of Lords, or any other court, for what they did in that matter.

Their privileges being rights peculiar to that house, what is their privilege, and the breach of it, is only examinable, and to be judged by themselves.

That the courts of *Westminster-Hall* have that deference for each other's judgment, that in commitments for contempt, or misdemeanour, which are frequent every term, another court, though superior, will not redress the prisoner by *Habeas Corpus*, or otherwise; but he must address to the court which committed him, much less can an inferior court do it.

The House of Commons therefore expected the same deference from those courts which they pay each other; and also from the Lords House what is due to a co-ordinate jurisdiction: The Commons taking themselves to be superior to any court in *Westminster-Hall*, and not allowing any court in this Government to be their superior, no more than their predecessors have done.

The Commons do not intend by their declaration to make a new law, but barely declare what the law was, and prohibit any person to act contrary.

The term *Declaration* is not peculiar to the Prince, but is a familiar term in *Westminster-Hall*.

The commitment was not for acting contrary to the vote of the Commons, but for acting contrary

to

to law, after the law was notified to them by that declaration, and they thereby prohibited to proceed in that course.

To set this in a true light, if a man sues in the admiralty, or ecclesiastical court, for a matter properly cognizable at common law, the party shall not indeed be committed for commencing that suit; but if the defendant in such suit obtains a prohibition, which declares what the law is, and gives the plaintiff notice that his suit is contrary to law, and therefore prohibits him to proceed any further therein; if he does proceed, an attachment will issue to arrest him for breach of prohibition, as it is said, though in truth, it is for acting contrary to law, after he had been admonished what the same was.

Now there's no difference between the declaration complained of, and the prohibition mentioned, but in the name only; both declare what the law is; both admonish the person offending, and both command him not to proceed; so that there is as much reason to complain of a prohibition at law, as of the declaration mentioned in the resolution.

4. To the fourth resolution, if it respects the prisoners committed by the Commons, they apprehend the application ought to be to their house.

5. For the fifth resolution, the Commons have the same exceptions to it as they had to the third resolution: For if Council, Attornies, or Solicitors, are prohibited, and act contrary to the order of any court, they are guilty of a contempt of that court, and for such contempt they may be taken into custody.

To their Lordships last resolution, it is very true, that in the last reign the House of Commons did so resolve in the cause of Sir *Thomas Armstrong*, as hath been cited, which case was, that Sir *Thomas Armstrong* was indicted for high-treason, and afterwards fled beyond sea, where he was at the time of the *exigent* awarded against him; and afterwards,

within a year after the *exigent* awarded, he was brought prisoner into *England*, add would have a *writ of error*, but it was denied him; upon which the *House of Commons* made the resolution mentioned. At the common law, if a person had been guilty of a capital, or any other crime, and had been in *England* at the time of the indictment found against him, but was beyond sea at the time of the *exigent* awarded, and thereupon an outlawry was had, the person outlawed might any time afterwards have reversed that outlawry, for that error in fact; the practice whereupon was, that persons guilty of treason, would fly beyond sea, and there stay till the witnesses against them were dead, and then return into *England*, reverse their outlawry, and become safe. To remedy which mischief, was the Statute of *Edward VI.* made, which takes away the error in treason, unless the person outlawed rendered himself to the Chief Justice within a year after the outlawry: Within which exception was the case of Sir *Thomas Armstrong*, as the Commons apprehended, which was the reason of the resolution: And in other cases the practice since that resolution has been otherwise; for in the case of *Salisbury*, who was attainted of felony for counterfeiting the stamps, a *writ of error* was denied him, tho' he petitioned for the same. But if this resolution is aimed at a *writ of error* for denying a *Habeas Corpus*, or denying to bail, or discharge persons committed by the *House of Commons*, this resolution is very wide from the purpose; for, whether a *writ of error* be a *writ of right*, or a *writ of grace*, in all cases where a *writ of error* does lie, yet their Lordships resolution cannot be carried so far as to make a *writ of error* lie, in a case where there is no judgment pronounced, as there never is in the case of an *Habeas Corpus*, or in any thing relating thereunto; for if a *Habeas Corpus* is denied, or if granted, and the persons thereupon denied to be bailed or discharged, this is

no such judgment, but that the same, or any other court, may grant an *Habeas Corpus*, and discharge or bail the person committed.

Your managers added, The Commons hoped it would be no difficulty to convince the Lords, that these resolutions were both unreasonable and unparliamentary, and they have not been much justified; and certainly it cannot be Parliamentary, or reasonable, for the Lords to condemn the Commons in the case of their own privileges, when the Lords are no Judges of them: And therefore, though the Commons have now entered into this debate with their Lordships, it was never meant to subject their proceedings to the Lords examination, but only to satisfy the Lords, and all mankind, that the Commons have not done an extravagant thing; that a noble Lord said, *they did not intend to interrupt the Commons in the determination of their elections.* The Commons are beholden to them for that; for otherwise, when they thought fit, they might as well meddle with that, as several other things they have of late taken upon them.

The Commons hope their Lordships will consider what the constitution is, and think it not reasonable, that any part should exceed its due bounds: But there have been great invasions made upon it by their Lordships, and some instances of that kind have been delivered at the last conference; and it would be easy to shew, that the judicature which of late has been assumed by the Lords, is not consistent with the constitution.

*A writ of error* in this case, the Commons take to be such: And the Commons would be blameable for admitting of it, since no such writ does lie; and the Commons have done well in advising her Majesty not to grant it, since it is against the law: The Commons find no such writ ever brought.

'Tis said their Lordships will do right to the Commons upon it; but the Commons can never think



think it reasonable to trust the liberties of the people of *England* to their Lordships pleasure, for they that have power to do right, have power to do wrong; and power is so often abused, that the Commons can never suffer the Lords to assume this new power to themselves. Were we certain power could never be abused, an *arbitrary*, and what is called a *tyrannical power*, would be the best in the world, for that not being tied to any rule, would apply the remedies proper in all cases; but since this is not to be expected, the Commons were in the right to stop this *writ of error*: They find one thing has brought on another; and therefore, for the future, shall oppose any further progress of this nature.

*It was further urged by the Lords, in reply,* that if such a *writ of error* wants a precedent, 'tis a new sort of imprisonment has occasioned this.

That the consequences urged by gentlemen cannot avail.

That if the law be so, nothing but the legislature can alter it.

That 'tis said, the Lords cannot judge of the privilege of the *House of Commons*. They do not say they can; there may be no occasion: But from precedents it appears they have done it by *writ of error*, and at the desire of the Commons.

That not only the Lords, but all mankind will judge of what is not their privileges, if they claim that, which neither sense, nor reason, nor law will justify.

That if the Commons say, to bring an action at law against persons not privileged is a breach of privilege, all mankind will say it is not.

That this comes upon a petition of five men to the Lords, setting forth, they have been imprisoned by the Commons for bringing their actions against the Constables of *Aylesbury*, and for suing out *writs* of

of *Habeas Corpus*, and are at least delayed in a writ of error.

The question lies in a narrow compass ;

Whether they have a right to bring their actions at law ; if so, it is injustice to imprison them for doing it ;

A hardship to deny them writs of *Habeas Corpus*, and a greater to imprison their council and agents, for endeavouring to procure them their liberty.

That their right is settled by a judgment of law, which will ever remain, 'till altered by the legislature.

That a declaration of one house, or both houses, cannot alter the law.

That the Lords intend not to disturb the Commons in the right of judging, only as to their own members.

That the material difference is between judging of the right of the electors, and the right of the elected.

And there may be cases, as here, where the election is not in question, and yet the electors receive great damage in being denied their vote.

That the right of freehold is a man's birth-right, and cannot be taken from him, but by law.

That if any person be injured by any officer whatsoever, he may, by law, seek for reparation : Otherwise, there is a right without a remedy, which is no right at all.

In answer to this, your managers said ;

This action is of the first impression : And 'tis a good argument no such action lies, because none was ever brought before, and especially, because occasions cannot be presumed to have been wanting in every new election of members to serve in parliament, nay, many more justifiable than in the late case of *Ashby* and *White*, where the plaintiff was a

person likely to become chargeable to the parish, and therefore removed by the order of two Justices: And this, by the way, brings in mind the printed case of *Ashby* and *White*, from the report of the Lords Committees, where 'tis given in answer, no such action before was brought, *that few had such a true English spirit as that plaintiff*, tho' 'tis said, he then was a *Cobler*, and formerly had been an *Hofler*; and his breast, it seems, was first warmed with this true *English* spirit, which was rather a spirit of faction.

And it is worthy observation, that in this case, the costs and charges sustained by *Ashby*, or somebody for him, could not be less than 100*l.* more than the costs and damages he recovered; so that it was *infelix victoria*, and no benefit, but a loss to him. A noble Lord was pleased to say further, that tho' he would not pretend to judge of the Commons privileges, yet he might of what was not their privilege. That argument appears very strange, since the Commons say, the matter in question is their privilege; and if the Lords saying 'tis not, is sufficient to divest them of it, the same method may divest the Commons of all the rest. The Commons are not going about to create new privileges, but continue the possession of those which their predecessors ever enjoyed and exercised: and which they think neither this, or any other future House of Commons, can ever depart from.

The Lords afterwards receded from the generality of their second and last resolutions.

They said, the second, so far as that every one who apprehends himself injured has a right to seek redress, was general, but what followed of an action at law, was confined to the present case.

So the sixth, tho' it was general, was to be understood in this particular case.

As to what was said, that none but a superior court can take cognizance of what another does, it was answered,

That when the Earl of *Shaftsbury* was committed by the House of Lords for a contempt, he was brought by a *Habeas Corpus* to the court of *King's-bench*: This was complained of to the House of Lords: But they passed it over, being of opinion, a man might seek for liberty where he would.

The Lords judicature is too sacred a thing to be touched.

*Your managers thereupon returned*, They wished their Lordships had said that at the beginning, it would have saved much time, and shortened the debates; for the Commons think their privileges as sacred as the Lord can their judicature. Your managers proceeded to say,

That as nothing offered at this conference, or the last, was meant to submit or lessen the privilege of the Commons; much less had any thing in the precedents in the time of *Queen Elizabeth*, and *James I.* produced at the last conference, any tendency that way.

And in answer to some objections made to those precedents, your managers said, the Commons did not take upon them to set forth the whole proceedings, which are very long; but tho' they had not their books there to make out the quotations, can depend upon what they have stated to be true.

In the precedent of *Sir Francis Goodwin's* case, cited by the Commons, there are no omissions that, duly considered, can make that case less to the advantage of the Commons on this occasion: for if the word *order* be omitted, and taking the answer to have been, *that they did conceive it did not stand with the honour and order of the house, to give account of any their proceedings or doings*, that will



little alter the case, since it is plain, from the entry on the journal, the Commons, in returning this answer, had regard chiefly to the precedent then quoted, 27 *Eliz.* when the Commons refused to give the Lords any reasons (tho' the Lords desired them) for the rejecting, at the first reading, a bill the Lords had sent down to the Commons: The reasons for the Commons proceedings in this case were prepared by themselves, which they did communicate to the Lords; but the Lords were not to add or diminish: And tho' some Lords were present at the Commons delivering their reasons, there is a material distinction, upon the Commons journals, of those Lords being present *as Lords of the Council, and not as Lords of the Parliament.*

And the noble Lord who took notice of the Commons omission in the stating of this case, and pretended to state it fully and truly himself, omitted, that the new writ was ordered to issue at the request of Sir *Francis Goodwin*, by his letter; which, for the satisfaction of the house, was read and entered on the journal, before any question for the new election was made.

In that of the 28th of *Eliz.* the Commons did not at the last conference omit to take notice of the Judges determination; but it is justly stated, as a matter the Commons in the examination of that case were informed of, *but did not respect*; the Commons then asserting themselves to have the sole determination of that case.

Your managers further urged,

Tho' the Commons do not submit their privileges, it may be proper to ascertain what they claim, with the reasons why they are at this time the more concerned to oppose all attempts upon them.

They do agree the right of voting may be grounded upon freehold, charter, or prescription; and they do not pretend to draw them from the courts

courts of common law, when as such they come there originally, immediately, and directly in question.

But it is as plain, when the right of voting in an election is the thing originally, immediately and directly, in question, that is solely cognizable in the House of Commons, whose determination is the standing rule for all places: And if the elections only were examinable by the Commons, and every elector's vote was examinable elsewhere, the consequence of such different determinations is fully stated, as delivered at the last conference; which common and known difference of coming originally, or collaterally and incidentally in question, will answer the case of the Earl of *Banbury*, where the order of the House of Lords came only incidentally in question, upon an indictment for murder; nor is there any injury in this case that requires an action, much less damages: The elector's vote, upon every election, depends upon its own true foundation, as the elector then stands intitled by freehold, charter, or prescription, whether he was intitled, or was allowed or refused, at any former election, or not.

Nor is damage always necessary to a remedy; that which is specifick, and gives the right, is the most noble and compleat remedy; damages being only secondary, substituted by way of recompence where the other cannot be had, as appears by many instances in the law.

The Commons had great reason to assert their ancient right, and withstand these late and new attempts upon the constitution, which in every step have been unprecedented; viz. the *Action*, the *Habeas Corpus*, and the *Writ of Error*.

The action was never known, tho' the like occasions have been as frequent as elections, unless these *Aylesbury* men have more refined notions of their rights and privileges than others ever had.

As to the *Habeas Corpus*, the argument is so much stronger, as liberty is dearer than property.

As

As to the writ of error, tho' the Lords resolution is general, they now assert it to be of right only in this case.

As the Commons, at the last conference, waved the point of a writ of error being of right or of grace, so they do now, not by way of admission, but as 'tis not material in this case.

But thus much may be observed, that this is not the common case, where the question arises and falls under the determination of the Judges of the law, which is of petitions of right, and writs of error in the courts of *Westminster*, (as that of Sir *Thomas Armstrong* was) where the Queen is party; there it is in the room of a suit against the crown, and if denied, the party has no remedy.

This petition to the Queen, for a writ of error in Parliament, is properly a parliamentary case, and is the same when the Queen is party or not; and seems some remnant of our ancient constitution, where all petitions were to the King in Parliament, or to the King and his great council, which was distinct from the House of Peers, and were examined by triers, whether fit for the Parliament to proceed upon, or not; and to say, that upon such examination they could not be rejected, is to say, that examination was insignificant. And if in this case no writ of error lies, it cannot then be said, that the denying of it is an obstruction of justice, or contrary to *magna charta*.

That a writ of error lies not in any proceeding on any *Habeas Corpus*, has been the uniform opinion of former times, as appears in the case of the city of *London*, 7 *Jac.* reported by the Lord Chief Justice *Coke*, in his eighth report, where one under an arrest, for the penalty in a by-law, brought his *Habeas Corpus*; and the Judges took it for a ground, that no issue or demurrer could be joined upon the return, nor could any writ of error lie upon their award; and upon

upon that, as a principle, grounded their resolution, Fo. 128.

And that this never came directly in question, is because a writ of error in such case was never asked, much less had, upon a bare commitment of any court whatsoever: And it is hard to imagine that there is any lawful resort or appeal for liberty, left untried at this day, when so many, in all times, have had occasion to apply for it; especially considering the frequent commitments of both houses of Parliament.

That the Commons are not surprized, to find the Lords make such a shew of submitting their privileges to the courts of *Westminster*, when it is in order to draw all the rights and privileges of both houses to their own final determination; and much less when they consider how insignificant all courts of justice are rendered, while their Lordships exercise the last resort in judicature.

The several attempts in the way of judicature, which have been made upon the constitution, are so many reasons for the Commons at last to make a stand.

The very form of the *writs of error* in Parliament is altered in a most material part.

It is still returnable into Parliament generally; and the judgment is entered, *per curiam Parliamenti*.

But where the ancient form, which appears in *Rostall's Entries*, Fo. 302. was, *ut de concilio & advisamento dominorum spiritualium & temporalium ac communitatum in Parlamento nostro existentium ulterius pro errore corrigendo fieri faciamus quod de jure, &c.*

Of late, as appears by a *writ of error*, printed in the Lord Chief Justice *Saunders's* second report, Fo. 223. (and agreeable to that are all the modern ones) that word (*communitatum*) is omitted.

This is only touched for an instance, that even the highest records, which ought to derive to us our laws



laws and constitution pure and intire, have been corrupted.

And to proceed to instance some modern innovations upon our constitution, in point of judicature:

In *December*, 18 *Jac.* 1. it appears by the Lords journal, that an appeal to the Lords from a court of equity, was by them acknowledged to be as new and unprecedented, as any of the attempts which occasion the present conference. —

*Here the Lords interrupted your managers, affirming,* That they were restrained from entering into debate of their judicature of appeals from equity, as foreign from the subject matter of the last conference. But it was answered, and insisted by your managers, that this was part of the matter offered at the last conference.

And your managers declared,

That they had more to offer, and were ready to proceed upon the subject matter of the last conference, in such manner as they thought their duty to the Commons of *England* required, if their Lordships thought fit to hear them: Whereupon the Lords did rise, and broke off the conference.

*Resolved,*

That the proceedings of this house, in relation to the *Aylesbury* men, committed by this house for a breach of privilege, and the other proceedings of this house in that matter, are in maintenance of the ancient and undoubted rights and privileges of the Commons of *England*.

*Ordered,*

That all the proceedings, in relation to the *Aylesbury* men, committed by this house, and the report of the Lords journal, and reports of the conference, and of the free conference, be printed.

*Ordered,*

*Ordered,*

That Mr. *Speaker* do appoint the printing of the said proceedings and reports.

*The Proceedings at the Court of Queen's-Bench,  
on the Habeas Corpus.*

A COMPLAINT was made to the honourable House of Commons, that since their last resolutions in the cause of *Albby* and *White*, several actions had been brought by *J. Paty*, *J. Oviat*, *J. Peyton*, *H. Basse*, and *D. Horne*, and prosecuted by *R. Mead*, against the constables of *Aylesbury*, in breach of the privileges of that honourable house; whereupon they were pleased, to order the matter of the said complaint to be heard at the bar of their house, and ordered the persons concerned to attend there, and appointed a day accordingly.

The parties appeared, (all but *Mead*) when the witnesses were examined, and they severally called to the bar of the house, and then withdrew. And, upon full hearing, the house were pleased to order their Speaker to issue out warrants for committing them (being taken into custody) to her Majesty's Goal of *Newgate*.

In the *Michaelmas* vacation, 1704. they prayed a *Habeas Corpus* upon the statute of 31 of *Cba. II.* upon the return of which, all the Judges met and advised, whether they were bailable by that statute, who were unanimously of opinion that they were not, and accordingly they were remanded. And in *Hilary* term following, they moved the court of *Queen's-Bench* for a *Habeas Corpus* by the common law, which was granted, upon the returns whereof the Judges of the *Queen's-Bench* desired the assistance of the rest of the Judges, whether they might be discharged? Who were all of opinion, except the  
Lord

Lord Chief Justice *Holt*, that they ought to be remanded: But it was argued in the *Queen's-Bench*, by council, and afterwards the Judges delivered their opinion *Seriatim*.

Mr. *Page*, Mr. *Mountague*, Mr. *Lechmere*, and Mr. *Denton*, were council for the prisoners, and after the reading of the return of the commitment, Mr. *Page* said, that the writ of *Habeas Corpus*, is a writ grounded on common law, and therefore this court can bail all persons, that by the laws of *England* areailable; that he did not say, but that the House of Commons hath privileges that belong to them, and may commit for breach of such privileges; that he did now only inquire, if there be any law for the commitment of the prisoners, and therefore the first question he made, was, *If there was a breach of privilege returned?* adding, that there being no notice in the return, that the House of Commons has any privilege, he needed not argue whether they have a power, or not, to restrain men from suing in the Queen's court. The Lord Chief Justice *Holt* told Mr. *Page*, that the question was, *If they were not to take notice of their power, tho' not returned to that court?* Mr. *Page* answered, that tho' the court would take notice of any power of the house, yet that not appearing in the return, they could not judge of it, the commitment being by the Speaker, and not by the house. The Lord Chief Justice replying, that the commitment was in pursuance of the order of the house; Mr. *Page* subjoined, that then it should be shewn to be by the house, the Speaker being in the chair, which was not mentioned in the commitment. But this was over-ruled by the Lord Chief Justice, who said, that by the house, was to be understood the whole house sitting, with the Speaker in the chair.

Mr. *Mountague* continued the same objection to the commitment, adding, that it did not appear, that the prisoners were any ways related to the house

of

of Commons, either as members or officers: That as to the Lord *Shafisbury's* case, he was a member; that he agreed every court must, and have power to keep order among themselves, but that to take a man out of the house, who was not of the house, nor guilty of any breach of privilege, for ought appeared, by a return, he knew no law for it; that the cause assigned, was because the prisoners had been guilty of bringing and presenting an action, which he did not take to be a crime by any known law; that in the case of the constable of *Aylesbury*, there was a judgment at law judicially given, which could not be got over, until some act of Parliament interposed, and the law being so, that a man might bring his action, he did not know what crime a man could be guilty of that used this law; that the words of this commitment went further, that bringing this action is *contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges*; that they know not what this word *declaration* means, neither did they understand what that breach of the jurisdiction was; that as to the words, *against the known privileges of the house*, he was at a loss what action is against the privilege of the house, because they can have no privilege against law, and he was sure it was not against law to bring any action. Then he took notice, that the commitment was during pleasure; adding, that he had known persons committed *per mandatum domini Regis*, bailed, and therefore by stronger reason ought they to be bailed, if committed by the House of Commons.

Mr. *Lechmere* enforced what had been alledged by the other two, adding, that one part of the commitment, which set forth the reasons of it, was for bringing an action at law, contrary to the declaration of the House of Commons, in opposition to which declaration, he must oppose the declaration of the Lords; that this commitment being also said

to



to be for a contempt of the high jurisdiction of the Commons, the Lords in the case of *Asbby* and *White*, had declared against it; then he urged, that no other court, save that of the Lords, and the courts at *Westminster*, and other inferior courts of *England*, can execute any jurisdiction, touching any actions at law, and that privileges which are against the known laws of *England*, are in themselves void. Another objection, or exception, was, that the continuance of the imprisonment of the prisoners was a new commitment; that the *Habeas Corpus* is the way the Queen takes to make disquisition about the liberty of her subjects; that tho' both Houses of Parliament are proper Judges of their own privileges, yet this court has formerly judged of their own privileges, to which purpose he instanced in the Lord *Shaftsbury's* case, wherein notice is taken of a case, where an original was filed against a member, sitting in the house; and that in the case of the Lord *Banbury*, tho' the Lords temporal and spiritual had declared he was no Peer, yet, in this court, when he was brought to be tried for murder, and denied the jurisdiction here, insisting upon his peerage, this court refused to try him, and allowed his plea; that the laws of Parliaments are the customs of Parliament; that there is no precedent in Parliament to oppose or commit a man for prosecuting for his freehold or franchise; but on the contrary, he believed, in the rolls of precedents there might be found a case, where bail had been allowed by this court, upon a commitment of the House of Commons.

Mr. *Denton* excepted to the return of the commitment, alledging first, that the warrant did not sufficiently describe the crime. Secondly, that it did not appear, that the party committed had notice of the vote or declaration of the House of Commons, for every man is not bound to take notice of a vote, because it is but a temporary thing. Thirdly, that it not appearing by this return, that the prisoner

ner was a commoner, he might, notwithstanding any thing that appeared to the contrary, be a Lord, and then it must be agreed, the Commons had no jurisdiction: That if it had been a general commitment, without shewing the offence particularly, and said, for a breach of privilege only, perhaps it had been a good commitment; but here the cause was set forth, and it appeared by the judgment of the Lords, in the case of *Albby* and *White*, that was no cause at all of commitment; that bailing the prisoners in this court, did not meddle with the privileges of the House of Commons, because, if bailed, yet they are answerable to the house, and are prisoners *in custodia Legis*; that indeed Justices of the peace can commit for a riot without bail, but this power arises from an express act of Parliament for that purpose; that the Queen herself cannot commit so as to bind the power of the law, but this court can in such cases, and always have, upon good cause shewn, bailed, notwithstanding such commitments: concluding, upon the whole, for the release of the prisoners.

The council having done pleading, the Judges proceeded to give their respective opinions.

Mr. Justice *Gould* and Justice *Powys* said, they would chiefly insist upon *Lex & Consuetudo Parliamenti*, but they would first maintain the form of the warrant.

*Objection.* It was objected, that it is not set forth in the return, how the House of Commons have a power to commit.

*Answer.* We must take notice of their power without shewing it.

*Obj.* That this is a commitment by the Speaker only, for that the warrant does not run, *Ordered by the Knights, Citizens, and Burgesses in Parliament assembled*, according to the precedent in my Lord *Shaftsbury's* case, 1 *Mod.* 144.

VOL. IV

R

*Ans.* That

*Ans.* That it is good, being according to their form, and that it must be presumed, the Speaker's warrant was by order of the house.

*Obj.* There is no seal to the warrant, and that every warrant ought to be under hand and seal, or else the commitment is unlawful.

*Ans.* Courts do not use to commit by warrant under seal, but a Justice of peace must; but they at the quarter sessions do not commit under seal; besides, the custom of Parliament justifies this warrant.

*Obj.* This is not like my Lord *Sbafisbury's* case, for he was a member of the Lords House; also this commitment is for a matter done out of the house.

*Ans.* Then they must never commit for breaches of privileges, for most are committed by others than their own members, and for matters out of the house.

*Obj.* The duration of the imprisonment during pleasure, is illegal and uncertain.

*Ans.* This is made use of for their advantage, for they are discharged upon the Parliament's rising; but also this form is according to their customs. And for contempts to this court we commit, without expressing for what time, which is by consequence during pleasure.

*Obj.* This commitment is for bringing their action at law, and for taking the due course of law.

*Ans.* What is privilege, but dispensing with the law? The generality of breaches of privilege, are for taking the due course of law. As to the case of *Albby* and *White*, that is objected, who knows whether this is the same case, it does not appear to us to be the same, for there may be different votes, and different circumstances in this case; if you go to the scanning the words of a commitment, who knows not that most commitments that would hold for such, do express the cause but shortly, and but just give a hint? And the law does presume, that the higher

higher courts do understand what they do, and therefore are not tied up to such strictness as inferior courts.

*Obj.* If this court of *Queen's-Bench* can discharge a man committed *per mandatum domini Regis*; they may upon a commitment by any member or body of people whatsoever, if not legally committed.

*Ans.* That commitment is not good, because the King does not act in person, but hath committed all his *power judicial*, some in one court, some in another, so that no body is to be committed to goal upon the Kings special command; but what is done in court, is of greater authority, and the law does adjudge it to be done by the King.

*Obj.* Shall the House of Commons take a despotick power, to regulate how actions shall be brought, and what actions shall not be brought? \*

*Ans.* Can we suppose that high court would stop the progress of the common law of *England*? 'Tis highly dishonourable to have such thoughts, and no body dares think so, or will presume to say so; and people would laugh at one that should say, the House of Commons will take away the liberties of the people.

There is no better way to determine the jurisdiction of either House of Parliament, than by usage and custom, as the bounds of parishes are. That there is no precedent or case, nor so much as an opinion yet cited, that the courts of *Westminster-Hall* have a power to judge of the authority of the House of Commons, or that the orders and commitments of the House of Commons can be discharged in *Westminster-Hall*, nor ever before attempted to be discharged here, upon such a commitment by the House of Commons; which is a good argument, according to my Lord *Coke's* rule, that we want power to do it.



It would be impossible for us to judge of the privileges of the House of Commons, for there are no printed books of their privileges, nor is there any means by which we can attain to the knowledge of them: But their customs and privileges are kept as *Arcana's* in the rolls and records of their own house, and their privileges depend altogether upon precedents in Parliament; they do judge it is a contempt and breach of their privileges; and who shall say nay? They are proper Judges of the matter, and upon the return, it appearing they were committed by the House of Commons, our jurisdiction ceases; and cited *Prin's Animadversions*, fol. 4. and the King against Sir *John Elliot* and others, in *Cr. Ch.* 181. That upon a writ of error in that case, in the House of Lords, it was resolved, that this court hath no jurisdiction of a misdemeanour committed in Parliament.

Mr. Justice  
Powel.

THAT this is a case of the highest consequence, for it concerns the privileges of the House of Commons, the liberty of the subject, and the jurisdiction of this court; 'tis the first case of this nature, for the Lord *Shaftsbury* was a member of the house, and there may be a greater jurisdiction in some cases over their own members, than over strangers: However, they had not any authority upon the return, for they are committed by another law than we proceed by; and to be committed by one law, and to judge of the commitment here by another law, would be a strange thing: For the house do not commit by the authority of the common law, but by another law, *Legem & Consuetudinem Parliamenti*; for there are in *England* several other laws, besides the common law, viz. the ecclesiastical law, the admiralty law, &c. and there is the law and customs of Parliament, where they have particular laws and customs for their directions.

To state judicature will help to clear this case. The House of Lords have a power to judge by the common

common law, but not originally, but a dernier resort upon writs of error and appeals; and for that reason it is provided by the constitution, for the Judges to give their assistance, which they are bound to do. But they have another law, viz. *Lex & consuetudo Parliamenti*, which the Judges are not to assist in, or give any opinion; and I dare say, the House of Lords would take it ill, should they meddle or advise therein, for they have their privileges in their own rolls and books.

That the Commons have also a judicature, not by the common law, but do judge of breaches of privilege, and contempts to their house, *secundum legem & consuetudinem Parliamenti*, 4 *Inst.* 23. and by this law these persons are committed, and now are brought to be discharged by the common law. The resolution of the Commons upon the breach of privileges is a judgment, and the commitment an execution of it, which cannot be controlled; for this would be to draw it *ad aliud examen*, and then the Commons would not be supreme Judges of their own privileges.

That the resolution in the House of Lords, in the case of *Ashby and White*, does not bind the House of Commons, nor determine their privileges; for they judged of the privileges of the Commons as an incident to the action, and one court may judge of a matter within the jurisdiction of another court, when without it they cannot determine the case before them; as this court may of admiralty, or ecclesiastical jurisdiction, if the question arises in an action depending in this court. But such a determination will not bind another court, which has an original cognizance of that matter, as an ejectment now depending in the common pleas, the general issue pleaded, and a special verdict; the question there is, if a quaker's marriage, be good; now if it should be held in that court a void marriage, and the judgment should be affirmed in this court, and upon a

writ of error in the House of Lords, it should be reversed, this would not bind the ecclesiastical court, but they might proceed there for incontinency; and if they should proceed there to excommunication, finding it a void marriage, and the party taken by the *excommunicatio capiendo* should bring this *Habeas Corpus* upon the return of it, we could not discharge him. But this is a matter originally arising in Parliament.

That this court may keep other inferior courts within their jurisdictions, but not the House of Commons, for no prohibition was ever granted to that court, though they exceeded jurisdiction: So if the House of Lords do exceed, or take cognizance of matters in the first instance, no prohibition would lie; for no inferior court can prohibit a superior: And no prohibition was moved here, nor could we have granted it; for the House of Commons is superior to all ordinary courts of law. When the House of Lords took cognizance and proceeded upon the petition of my Lord *Wharton*, complaining of an order of the court of exchequer, for filing the record of a survey of the honour of *Richmond*, and Lordship of *Middleton*; which the House of Commons, upon the petition of Mr. *Bathurst*, complaining of this proceeding, Jan. 28, 1703. resolved to be without precedent, and unwarrantable, and tending to the subjecting all the rights and properties of the Commons of *England*, to an illegal and arbitrary power. They also resolved then, that it is the undoubted right of all the subjects of *England*, to make use of the record; as they ought by law to have done, before the said proceeding of the House of Lords, *vide postea*.

In the 4 *Inst.* 50. it doth not belong to the Judges to judge of any law, privileges, or customs of Parliament, for the laws, customs, liberties, and privileges of Parliament, are better to be learned out of the rolls of Parliament, and other records, and

and by precedent and continual experience, than can be expressed by any one man's pen.

In 4 *Inst.* every court of justice hath laws and customs for its direction; some by the common law, some by the civil and canon law, some by particular laws and customs; so the high court of Parliament *suis propriis legibus & consuetudinibus subsistunt*. That Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common laws, but *secundum legem & consuetudinem Parliamenti*; and Coke says, *ista lex ab omnibus est querenda, a multis ignorata, a paucis cognita*. Now who shall adjudge this no breach of privilege, when the House of Commons, who are the proper Judges of their own privileges, have adjudged it to be a breach of their privilege?

That it is to no purpose to talk of the form of the commitment, if they have not jurisdiction; but there is no such thing as seals of the House of Commons, and this commitment during pleasure, does not tend to *villenage*, or *slavery*, as was objected by Mr. Mountague, unless there could be a perpetual Parliament, which there cannot be now; so that might have been spared; and he was glad *villenage* and *slavery* were so much forgot, that council did not know what it was, or at least, did not know how to apply it.

*Obj.* But it was objected, that they do no more in bringing their action, than what is adjudged by the House of Lords they may lawfully do.

*Ans.* That a good correspondence is to be wished for between the two houses, by all true lovers of their country; but when they do not agree, there is no way to settle their jurisdictions, but first by *conference*, and then by free conference, and the Lords might have desired a free conference, when the Commons took this matter under examination, as the Commons did with the Lords in the case of *Skinner*, Coke, *Rep.* 13.



But it may be said, what if one house persists, and the other does so too? As to that, all free conferences are open, and the people of *England* may be present, and will be Judges, and they will not chuse such persons again as do commit, or do insist upon pretended privileges: So if the Lords do exceed their jurisdiction, the Commons may desire *a free conference*; and if they do persist, the people will be Judges, and will chuse such a Parliament as will deal with them.

That the Lord *Shaftsbury's* case is an authority in point of want of jurisdiction in that court; and tho' he was a member of the house, it does not alter the case here, for there are many instances that the *House of Commons* commit others than their own members: There have been many instances in both houses, that they may commit persons out of the house. 4 *Instit.* 23. 24. *Moore* 57. *Ferrer's* case in *Dyer* and *Plowden*, is a remarkable instance, that no other punishment could be inflicted for a breach of privilege; for he did not know that indictment would lie for a breach of privilege; and it would be a strange thing that the house should have power to examine into, and judge of the breach of privilege, and yet have no power to punish; for what signifies the power to judge, without the power to punish?

Lord Chief  
Justice Holt,

THAT this case does depend upon the vote that is recited in the Speaker's warrant of commitment, which was to this effect:

That it did appear to that honourable house, that *John Paty* of *Aylesbury*, has been guilty of commencing and prosecuting an action at common law, against *W. White*, and others, late Constables of *Aylesbury*, for not allowing his vote in an election of members to serve in Parliament, contrary to the declaration,  
in,

in high contempt of the jurisdiction, and in breach of the known privileges of this house.

That he owned himself to lie under two disadvantages; one, that all the rest of the Judges do agree with his three brethren, from whom he had the misfortune to dissent. The other, that he opposed the votes of the *House of Commons*, and did begin to think he might justify himself in resigning his opinion to the rest; but that he valued more the dictates of his own conscience, than any thing he could suffer in this world, and by that and his judgment (tho' it were but weak) he would be guided.

That this was not such an imprisonment as the *freemen of England* ought to be bound by. And that it did highly concern the people of *England*, not to be bound by a declaration of the *House of Commons*, in a matter that before was lawful.

That neither House of Parliament has a power separately to dispose of the liberty or property of the people, for that can't be done but by the Queen, Lords, and Commons; and this is the security of our *English* constitution, which cannot be altered but by act of Parliament.

That there is a crime charged by the vote for commencing an action; But sure that cannot be a breach of privilege, for an original may be filed against a member of Parliament, during the time of privilege, so that you don't molest him, and it is no breach of privilege; as it was resolved in Sir *George Binion's* case, 14 Ch. II. for otherwise, by lapse of time in several actions, he may be barred by the statute of limitations; so that if it be not a breach of privilege to commence an action against a member of Parliament. then how can it be so to commence an action against the Constable of *Ailebury*?

But then the vote goes further, and says, for commencing and prosecuting an action: But prosecuting

secuting may not be a breach of privilege neither; for entering and continuing is prosecuting, which may be done without a breach of privilege.

That it does not appear, that the Constable of *Ailebury* has any privilege above another person, for no man is presumed to be privileged, unless it be shewn; and he has no privilege as Constable.

That the vote goes yet further, and says, for not allowing his vote in an election of members to serve in this present Parliament: But this can be no crime.

That he admitted they were Judges of their own privileges; but the law must also be observed. By 2 *Ric. III. fol. 9.* it appears, it was no crime by the common law, to bring an action, tho' never so malicious, false, or groundless, where it is adjudged, that there is no punishment for it, because 'twas in a method of justice; but when business began to increase, costs were given against the plaintiff, by 23 *Hen. VIII.* for bringing an action causelessly. A Peer cannot have an action of *scandalum magnatum*, where there is no cause for the action wherein he is charged with scandal; so much the law regarded the right of bringing actions.

That when subjects have such a right to bring actions, it cannot be stopt by privilege of Parliament; for no privilege of Parliament can intend so far as to destroy a man's right.

That it has been adjudged a good action by the law of the land, and that damages may be recovered for the injury, in not allowing his vote; and this action is the same as *Asbby* and *White*, which lies before us, and if we consult the records, we shall find it to be the same.

That the latter part of this vote is, that the prosecuting this action is contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges of this house.

That

That the privileges of the House of Commons are limited, for there is no privilege in case of treason, or felony, or breach of the peace; for a Justice of the Peace may commit a member for breach of the peace, and if he should be indicted for it, his plea of privilege would not be allowed.

That nothing makes a privilege, that was not so before, (for the breach of which a man shall lose his liberty) but an act of Parliament.

That each house is Judge of their own privileges, because they are more conversant with the privileges of their own house; so the Judges decline it. But if they come incidently before the courts of law, they must determine it there.

That suppose the House of Commons had not meddled in this matter, but the defendants in this action had pleaded to the jurisdiction of this court, that this was a matter examinable only in the Parliament, and the plaintiff had demurred, we must then have determined it, and be Judges then of their privileges.

*Coke's 1 Inst. Lex & consuetudo parliamenti ab omnibus querenda, a multis ignorata, a paucis cognita*; and the reason 'tis known by so few is, because they do not seek for it. We are bound to take notice of the customs of Parliament, for they are part of the law of the land; and there are the same methods of knowing it, as the law in *Westminster-hall*.

In *Clarendon's* history, part 1. fol. 310. he was Lord Chancellor of *England*, a man of great probity and learning; his observations touching privileges of Parliament are these:

'It is not to be believed, how many sober, well-minded men, who were real lovers of the peace of the kingdom, and had a full submission and reverence to the known laws, were imposed upon, and had their understandings confounded, and so their will's perverted by the meer mention of privilege



' lege of Parliament; which, instead of the plain  
 ' and intelligible notion of it, was, by the dexterity  
 ' of those *Beautifens*, and their agents, and the sot-  
 ' tishness of the people, rendered such a mystery as  
 ' could be only explained by themselves, and intend-  
 ' ed as far as they found necessary for their occasions,  
 ' and was to be acknowledged a good reason for any  
 ' thing that no other reason could be given for. We  
 ' are, say they, and have been always confessed, the  
 ' only Judges of our own privileges, and whatsoever  
 ' we declare to be our privileges are such; otherwise,  
 ' whosoever determines that it is not so, makes him-  
 ' self Judge of that whereof the cognizance belongs  
 ' only to us. And this sophistical riddle perplexed  
 ' many, who, notwithstanding the desperate conse-  
 ' quence they saw must result from such logic, taking  
 ' the first proposition for true, which, being rightly  
 ' understood, is so, have not been able to wind them-  
 ' selves out of the labyrinth of the conclusion: I say,  
 ' the proposition rightly understood, they are the on-  
 ' ly Judges of their own privileges; that is, upon  
 ' the breach of those privileges which the law hath  
 ' declared to be their own, and what punishment is  
 ' to be inflicted upon such breach; but there can be  
 ' no privilege of which the law doth not take notice,  
 ' and which is not pleadable by and at law.

' The same part, *pag.* 312. ' But that their being  
 ' Judges of their privileges should qualify them to  
 ' make new privileges, or that their judgment should  
 ' create them such, as it was a doctrine never before  
 ' heard of, so it could not but produce all those mon-  
 ' strous effects we have seen: When they have assem-  
 ' bled to swallow all the rights and prerogatives  
 ' of the crown, the liberties and lands of the church,  
 ' the power and jurisdiction of the Peers; in a  
 ' word, the religion, laws, and liberties of *England*,  
 ' in the bottomless and insatiable gulph of their own  
 ' privileges.

That

That he had yet a greater authority than this, the opinion of King *Charles I.* in his answer to the nineteen propositions from both houses of Parliament, in Lord *Clarendon's* History, first part, 498. which answer is in the King's own words in *Rushworth's* Collection, 3 vol. part 1st. 725, 730, 731.

' That tho' the bringing this action be contrary to the declaration, it does not follow therefore that it must be a breach of privilege; for this vote has not obtained the authority of a law, and they have no more power to declare the law, than they have to make a law.

That if bringing an action is a breach of privilege, why was not *Asbby* laid hold on? he prosecuted to judgment and execution; but these persons are committed for commencing an action.

How can the bringing an action in one court be a contempt to another?

If a man that has a privilege in one court is sued in another, he shall have his privilege: But it is no contempt in the plaintiff that he sues in another court, and there is no punishment for it; much less can it be a contempt to the House of Commons, where no action can be brought.

That he admitted, the House of Commons may commit any person, and for any crime, because they may impeach any person for any crime whatsoever; but that course is seldom taken, unless where the crime requires a strict prosecution, and very much concerns the publick.

That the Lord *Shaftsbury's* case is not like this; for he was a member of the house, and it was for a contempt in the house.

The house may at any time commit a man for a contempt in the face of the house; whereas the prisoners are committed not for a breach of privilege or contempt, but because they have brought their actions

actions which are legal, and so adjudged by the Lords in the writ of error.

That he did not question but that the warrant was a good warrant.

That *Lex & consuetudo Parliamenti* is as much the law of the land, as any other law. 'Tis the law gives the Queen her prerogative: 'Tis the law gives jurisdiction to the House of Lords; and 'tis the law limits the jurisdiction of the House of Commons.

That if the ecclesiastical court exceed their jurisdiction, a prohibition will lie; and even the King's acts, if contrary to law, are void.

He insisted, that the Lord *Banbury's* case was a great authority for him.

He petitioned the House of Lords to sit, and also to have the King's leave. The Lords determined he was not a Lord; yet when he was brought upon an indictment by the name of *Charles Knowles*, Esq; he here pleaded, and insisted, that he was a Peer; which plea was allowed, and he was not tried.

Tho' the Lord Chief Justice was so clear in his judgment, yet the other three Judges being of a contrary opinion, the majority prevailed; and the prisoners were remanded to *Newgate*.

Mr. *Lechmere* moved, that the judgment might be entered upon record.

The Lord Chief Justice *Holt* asked the Clerk of the crown, how they entered the judgment in these cases; who answered, that they never make up any roll, but only enter a *remittitur* generally upon the back of the writ. Lord Chief Justice *Holt* told him, that of right he ought to make up a roll (and as he was informed he had the fees allowed for making up the roll) and then bid the Council come to his chambers, and bring precedents; and afterwards the judgment was entered in this manner.

The

The Judgment; *Quia cognitio causæ captionis & detentionis predictæ non pertinet ad curiam Domine Reginæ, ideo remittitur.*

Upon the commitment of these five *Ailesbury* men, and their being remanded to *Newgate* again, the House of Lords drew up the following representation and address, viz.

*The humble REPRESENTATION and ADDRESS of the right honourable the Lords Spiritual and Temporal, in Parliament assembled, presented to her MAJESTY the fourteenth day of March, 1704. and her MAJESTY'S most gracious ANSWER thereunto: With their Lordships thanks for the same. Together with the papers annexed to the said address, and laid before her MAJESTY.\**

*Die Martis 13 Martii, 1704.*

**W**E your Majesty's most dutiful and loyal subjects, the Lords spiritual and temporal, in Parliament assembled, are under an unavoidable necessity of making our humble application to your Majesty, upon an occasion, which, as it is very grievous to

\* *Die Mercurii, 14 Martii.* It is ordered by the Lords spiritual and temporal, in Parliament assembled, that the representation and address this day presented to her Majesty, with her Majesty's most gracious answer thereunto, and the thanks of this house for the same, together with the papers annexed to the said representation and address, and laid before her Majesty, shall be forthwith printed and published.

*Matthew Johnson, Cler' Parliamentor'*

us,



us, so we fear it may be uneasy to your Majesty: But the proceedings of the House of Commons, in relation to five Burgeſſes of the town of *Aileſbury*, *John Paty*, *John Oviat*, *John Paton*, *Henry Baſſe*, and *Daniel Horne*, have been ſo very extraordinary, that the conſequences of ſuch proceedings may prove ſo fatal to the properties and liberties of the people of *England*, and ſo directly tend to the interruption of the courſe of juſtice, to the eluding the judicature of Parliament, and to the diminution of your royal prerogative, that we can't answer it to your Majesty, to the Kingdom, and to ourſelves, without ſetting them before you in a due light.

One *Matthew Aſhby*, a Burgeſſ of the borough of *Aileſbury*, brought an action upon the caſe at common law, againſt the Conſtables of the town of *Aileſbury* (being the proper officers to return members to ſerve in Parliament for that place) for having by contrivance fraudulently and maliciously hindered him to give his vote at an election.

In this action a verdict was found for him; but judgment was given againſt him in your Majesty's court of *Queen's-Bench*, which was reverſed upon a writ of error brought in Parliament; where he obtained judgment to recover his damages for the injury, and afterwards had execution upon that judgment.

The five perſons above-named, being Burgeſſes of the ſame borough, and having (as they conceived) had the like wrong done them by the Conſtables there, and ſuppoſing the law to be equally open to all *Engliſhmen*, did ſeverally commence and proſecute actions againſt thoſe officers, in order to recover their damages.

And

And for so doing, they were sent for to the bar of the House of Commons, and committed prisoners to *Newgate*, the fifth day of *December* last, during the pleasure of the House of Commons, as having acted contrary to the declaration, in contempt of the jurisdiction, and in breach of the privileges of that house.

These proceedings are wholly new and unprecedented. It is the birth-right of every *Englishman*, who apprehends himself to be injured, to seek for redress in your Majesty's courts of justice: And if there be any power that can controul this right, and can prescribe when he shall, and when he shall not be allowed the benefit of the laws, he ceases to be a freeman, and his liberty and property are precarious.

The crown lays claim to no such authority with any subjects whatsoever.

If a man mistakes his case, in believing himself to have a good cause of suit when he has not, if he mistakes his court, by applying to an incompetent jurisdiction, he will fail of relief, and be liable to costs, but to no other punishment: He is not guilty of a crime, nor is it a contempt of the court that has the proper jurisdiction.

But these men were guilty of no mistake; the point of law was settled by the judgment of that court, which is allowed to be the last resort, and this will continue to be the law, till it be altered by the legislative authority. They saw their neighbour quietly and unmolested reap the fruit of the judgment he had obtained; and yet, for pursuing the same remedy, they are condemned to an indefinite imprisonment, during the pleasure of the House of Commons.

This method does introduce an uncertainty and confusion, never before known in *England*. The most arbitrary governments cannot shew more direct instances of partiality and oppression.

The point of law is judicially settled; and yet the House of Commons take upon them to punish men by imprisonment, for endeavouring to have the benefit of what is so established for law.

We humbly observe to your Majesty, that the first thing they alledged in the warrant of commitment, as the offence of these five persons, is, that those actions were brought contrary to a declaration of the House of Commons.

It was never yet heard (when there was a House of Lords in being, and a King or a Queen upon the throne) that the House of Commons alone claimed a power, by any declaration of theirs, to alter the law, or to restrain the people of *England* from taking the benefit of it; nor have their declarations any such authority, as to oblige men to submit to them at the peril of their liberty.

If they have such a power in any case, they may apply it to all cases as they please; for when the law is no longer the measure, will and pleasure will be the only rule.

The certainty of our laws is that which makes the chief felicity of *Englishmen*: But if the House of Commons can alter the laws by their declarations, or (which is the same thing) can deprive men of their liberty, if they go about to take the benefit of them, we shall have no longer reason to boast of that part of our constitution.

The next thing alledged in the warrant is, that the commencing and prosecuting these actions, was a contempt of the jurisdiction of the House of Commons.

Such a jurisdiction was never claimed by the House of Commons, till upon this occasion; and if this novelty of a jurisdiction be founded on their new authority of declaring, they will stand and fall together.

The House of Commons have for a long time exercised a jurisdiction over their own members, by  
allow-

allowing or disallowing their elections, as they saw cause: But they have never before entertained a notion, that they had a jurisdiction over their electors, to determine (finally and exclusively of all other courts) the particular rights of those to whom they owe their being.

Your Majesty's royal writ commands, that the several electors make choice of persons to represent them in Parliament, in order to do and consent to such things as should be ordained there relating to the state and defence of the kingdom and the church, for which the Parliament is called: And they obey the command, in proceeding to choose members for the Parliament then summoned; but neither the writ which requires them to choose, nor the indenture by which the return is made, import any thing whereby it may be inferred, that the electors put into the power of their representatives, their several rights of election, to be finally disposed of at their pleasure.

It was an interest vested in them by law before the election, and which the law will preserve to them, to be exercised again in the like manner, when your Majesty shall be pleased to call another Parliament.

It was not possible for the electors to suspect, that such a pretence would ever be set up by their representatives, when in the course of so many ages, the House of Commons had never taken upon them, to try or determine the right of any particular elector, unless incidently, and only in order to decide a question, of the title of some member of their own house to sit amongst them.

The right of election is a legal interest incident to the freehold, or founded upon custom, or the letters patents of your Majesty's royal ancestors, or upon particular acts of Parliament, and must be tried and determined like other legal interests: And this consideration does manifestly shew the absurdity of pre-



tending, that such rights can be decided by the House of Commons, where there is neither a power of administering an oath, in order to discover the truth nor a power of giving damages, which is the only reparation the elector is capable of receiving in such a case. Therefore, if the electors, when they are deprived of their rights, have no place to resort to, but the House of Commons, the right of election would be a right without a remedy, which indeed is no right at all.

And it is put into the power of the officers, who have the return of members to serve in Parliament, to reject the votes of as many electors as they please, without being liable to make any reparation in damages to the parties; which is a notion not very likely to preserve the freedom and impartiality of elections.

The third thing alledged against these men in the warrant of commitment is, that by bringing these actions they have broken the privilege of the House of Commons.

A breach of the privileges of Parliament is certainly an offence; and, of all others, the House of Lords ought to be the last who should go about to lessen or excuse it, as having a like interest with the Commons in the preservation of the privileges of Parliament.

But however it might seem the interest of the Lords to be silent, while the House of Commons are setting a-foot new pretences of privilege, because they may share in the advantage; yet we think it our duty and our interest, to do all we can to preserve the constitution entire, and not to sit quiet when we see innovations attempted, which tend to the diminution of the rights of the crown, or to the prejudice of the subject: Because the best and surest way to preserve the rightful privileges of Parliament, is to abide by those that are certain and known;  
and

and it is not in the power of either, or both houses, to create new privileges to themselves.

It never was thought a breach of the privileges of Parliament, to prosecute an action against any man, who was not intitled to privilege of Parliament; and therefore, since the late constables of *Aylesbury* had no title to privilege of Parliament, at the time when those actions were commenced or prosecuted, we cannot imagine, upon what foundation the pursuing these actions can be voted a breach of privilege by the House of Commons.

It seems very necessary it should be known upon what rule this pretence is grounded, that the people of *England* may be at a certainty, and see some limits set to the claims of privilege. To serve the turn, it has been said, there are privileged cases, as well as privileged persons; but no instance has been produced, whereby this distinction can be applied to justify these commitments.

Actions at common law have been brought upon false returns and double returns of members to serve in Parliament, as in the cases of Sir *Samuel Barnardiston* and Mr. *Onslow*, which proceeded to judgment, and a writ of error was brought in one of them, and the plaintiffs could not prevail in either of those suits; and yet it was never pretended, that the commencing or prosecuting those actions was a breach of privilege of Parliament, nor were the persons concerned in them imprisoned or censured, tho' there was a much greater colour for such a pretence in those cases, because the question there directly concerned the right of sitting in Parliament; and consequently those would have been indeed privileged cases, if any such distinction had been once thought of in those days: Whereas in the actions brought by these five men, neither the plaintiffs nor defendants were members of Parliament, nor did the actions relate in any manner to the right of sitting there.

The opinion of the House of Commons, at that time, was very different from what it is now.

When the judgment of the King's-Bench (where Sir *Matthew Hale* sat then Chief Justice) which passed in favour of Sir *Samuel Barnardiston*, that the action was maintainable, was reversed in the Exchequer-chamber, the House of Commons was so far from thinking it for their advantage, to have their members deprived of the benefit of the common law, that in the year 1679, a Committee was appointed to enquire touching the reversing that judgment, and by whose procurement and solicitation, and by what ways and means, the same was reversed, and the names of the particular Judges that were concerned : And when afterwards that judgment in the Exchequer-chamber was affirmed in Parliament, the House of Commons never thought themselves secure against the corruption of the officers, who were to take the poll, and make return at elections, till they had got an act in the seventh and eighth years of the late King, which gave a remedy in *Westminster-hall* for false and double returns ; so little contented were they, in their own cases, with the jurisdiction of the House of Commons, and the remedy to be had there, which now they so fiercely contend their electors should entirely acquiesce in : And we cannot but think it manifest partiality in those Gentlemen, to go about by such violent means, to deprive their electors of recovering of damages, when they are wronged in being deprived of giving votes, since they thought it necessary for themselves to have that advantage, when they are injured in their own elections.

The sufferings of these unfortunate men have not ended here, and the rights of the free-born subjects of *England* have received a further and no less dangerous wound, in their persons.

These

These five men having endured a long and chargeable imprisonment, and despairing of their liberty any other way, were advised to sue out writs of *Habeas Corpus*, returnable in your Majesty's court of Queen's Bench, hoping to obtain their discharge by the help of that court, where the judgment ought to be given according to the laws of the land, without regard to any votes, or declarations, or commands to the contrary: But this endeavour proved unsuccessful, and they were remanded to *Newgate* by three of the Judges of that court, contrary to the opinion of the Lord Chief Justice *Holt*.

We shall not presume to offer any opinion to your Majesty, upon occasion of this judgment, at present, because it is not regularly brought before the house; and we only mention it, because the House of Commons took such offence at the bringing these writs of *Habeas Corpus*, that, on the twenty fourth of *February* last, they voted, that whoever had abetted, promoted, countenanced, or assisted the prosecution of those writs, were disturbers of the peace of the kingdom, and had endeavoured, as far as in them lay, to overthrow the rights and privileges of the Commons in Parliament.

This is a heavy charge; and if it be so criminal a thing for a prisoner to pray a *Habeas Corpus*, it does not only affect those who are at present concerned, but ought to touch every commoner of *England*, in the most sensible manner.

Liberty of person is of all rights the most valuable; and of which, above all other things, the law of *England* is most tender, and has guarded with the greatest care, having provided writs of several kinds, for the relief of men restrained of their liberty, upon any pretence, or by any power whatsoever; that so in every case they may have some place to resort to, where an account may be taken of the reason and manner of the imprisonment,



and the subject may find a proper relief according to his case.

No crime whatsoever does put an *Englishman* into so miserable a condition, that he may not endeavour, in the methods of law, to obtain his liberty; that he may not, by his friends and agents, sue out a *Habeas Corpus*, and have the assistance of solicitors and council, to plead his cause before the court where he is to be brought.

The court is bound by the law to assign him council, if there be occasion, and to give judgment upon his case, as it stands upon the return of the *Habeas Corpus*, and to remand, discharge, or bail the prisoner, as the cause of his commitment appears there sufficient or insufficient in law; and if what is alledged as the cause of imprisonment appears to be no crime in law, it is not the authority of those who made the commitment, that can excuse that court for remanding the prisoner.

This is the law of *England*: But according to these resolutions of the House of Commons, if a man has the unhappiness (tho' through ignorance or mistake) to do an act which shall be voted a breach of privilege, he becomes in a worse condition than any felon or traitor; his confinement makes it impossible for him, in person, to sollicite and procure a *Habeas Corpus*, and if any have charity enough to assist him, or to plead for him, in order to shew to the court the insufficiency of the commitment in matter of law, they become liable to lose their own liberty, and are involved in the same guilt of breach of privilege: So that let the imprisonment be upon the most trifling occasion imaginable, if it be by order of the House of Commons, every commoner must submit to it without redress; no friends can help them, no other authority can deliver them, till your Majesty shall put an end to that session.

The

The Lords have as just a concern, as the House of Commons can have, to maintain the authority, and keep up the awe of parliamentary commitments: And they will always do it, as far as justice and the usage of Parliaments will allow.

There have been cases, particularly that of the Earl of *Shaftsbury*, where persons committed by the House of Lords, even members of that house, have sued out writs of *Habeas Corpus*; and upon the returns of those writs, have been brought before the court of King's-Bench, and their council have been heard on their behalf; and yet no censure ever passed upon them for these endeavours to obtain their liberty, or upon their agents, solicitors, or council.

The House of Commons formerly acted with more reserve upon so nice an occasion, as the liberty of the subject; for in the year 1680, when a writ of *Habeas Corpus* was served upon the Serjeant at Arms attending the House of Commons, in the behalf of Mr. *Sheridon*, who stood committed by order of that house; after the house was made acquainted, that such a writ was served upon their officer, and had entered into very long debates upon the matter, they did not think fit to interpose, nor to pass any censures upon the persons concerned in procuring the writ, or in appearing in behalf of the prisoner; but left the Serjeant at Arms at liberty to obey the command of the *Habeas Corpus*; which he did accordingly, by carrying his prisoner before the Judge, where the *Habeas Corpus* was returnable.

The House of Commons have, in former ages, shewn a great and steady concern for the freedom of the persons of their fellow-subjects: And upon their petitions many excellent laws have been made, to protect liberty against all unlawful restraints by any authority, even that of the crown: But now it is insisted that their own imprisonments are out of the reach of those laws, and their legality not to be examined.

In

In the third year of the reign of your Royal grandfather, the House of Commons made a noble stand for the *English* liberties, and shewed, by undeniable evidence, that the causes of the imprisonment must be expressed in all cases, so that it might appear, upon the return of the *Habeas Corpus*, whether they were sufficient in point of law.

It could not then have been imagined that the successors of those men, would ever have pretended to an arbitrary and unlimited power of depriving their fellow subjects of their liberties, or to vote it to be criminal so much as to enquire into the validity of their commitments.

There is another occasion of offence, which the House of Commons have taken against *John Paty* and *John Oviat*, two of these prisoners, who thinking themselves wronged in their being remanded to *Newgate*, by the opinion of the major number of the Judges of the court of Queen's-Bench, humbly petitioned your Majesty for a writ of error, in order to bring this Judgment before your Majesty in Parliament; and it is certain the subject is never concluded by any judgment, till he comes to the last resort fixed by the law in this case.

The House of Commons being informed of these petitions, came to a resolution, which they laid before your Majesty, that the commitments of that house were not examinable in any other courts whatsoever; That no writ of error lay in this case; and that as they had expressed their duty to your Majesty in giving dispatch to the supplies, so they had an entire confidence in your Majesty, that you would not give leave for the bringing any writ of error.

The first position in this vote is very general, and the consequences of it are plain; if the commitments of the House of Commons are examinable in no other place, then no man in *England*, how innocent soever, is secure of his liberty longer than the House of Commons pleases; and men may be allowed

at least to wish that it were not so, tho' they may have a very high opinion of the Justice of that house.

It has been held as an undeniable maxim, that whoever executes an illegal command, to the prejudice of his fellow-subjects, must be answerable for it to the party grieved.

Let it be supposed then, that an action of false imprisonment was brought against the serjeant of the House of Commons, and that the defendant justifies his taking the plaintiff into custody, by virtue of a warrant of that house, and it appears upon the face of the warrant, that the cause of the commitment was no crime in law, and the plaintiff demurs, what must the Judges do in such a case? Will it be possible for them to avoid examining into the commitment, and so give judgment one way or other? Or can it be pretended, that a writ of error may not be brought upon such a judgment? And is it not the court, before which the writ of error is brought, under a necessity to do justice thereupon, as the law requires?

As to the second thing they have taken upon them to assert, that no writ of error lies in the case, we affirm to your Majesty with great assurance, that by our constitution, the House of Commons have no right or pretence to determine whether that be so or not, the right of judging when a writ of error is properly brought, is by law intrusted to that court to which the writ of error is directed; and therefore we shall not at present say any thing to your Majesty, in an extrajudicial way, and before the proper time, as to that point, whether a writ of error brought upon a judgment for remanding prisoners upon a *Habeas Corpus*, can be maintained.

Which way that question will be decided hereafter, when the writs of error are returned into the Parliament, is not at all material, in respect to the petitions of the prisoners which now lie before your Majesty: For unless your Majesty be pleased to grant



grant the writs of error according to their prayer, the matter cannot come to the proper decision in Parliament, and justice will be manifestly obstructed.

Whether the writs of error ought to be granted, and what ought to be done upon the writs of error afterwards, are very different things. The only matter under your Majesty's consideration is, whether, in right and justice, the petitioners are not entitled to have the writs of error granted.

We are sure, the House of Commons, in the year one thousand six hundred eighty-nine, was of opinion, that a writ of error, even in cases of felony and treason, is the right of the subject, and ought to be granted at his desire, and is not an act of grace and favour, which may be denied or granted at pleasure: So that as far as the opinion of the House of Commons ought to have weight in such a Question, (whatever the present opinion of that house is) they then thought a writ of error was the right of the subject in capital cases (where only it had been at any time doubted of.

But that it is a writ of right in all other cases, has been affirmed in the law-books, is verified by the constant practice, and is the opinion of all your present Judges, except Mr. Baron *Price*, and Mr. Baron *Smith*.

The law, for the better protection of property and liberty, has formed a subordination of courts, that men may not be finally concluded in the first instance: But this is a very vain institution, if they be left precarious in the method of coming to the superior court.

All suits are begun, as well as carried on, by the authority of your Majesty's writs, and the subject has a like legal claim to all of them.

The

The petition for a writ of error returnable in Parliament, is only a matter of form, and respect to your Majesty (like the petitions which the Speaker makes in the name of the Commons, at the beginning of every Parliament, for those privileges which they do not believe to depend upon the answer to those petitions) and is no more to be refused than any other writ throughout the cause.

To affirm the contrary, is to allow an arbitrary latitude to intercept Justice, and to make it depend upon private advices, and extrajudicial determinations, whether any causes at all shall be brought to judgment before the high court of Parliament.

These things being considered, how extremely surprising is an address from such a body as the House of Commons, that your Majesty would not give leave for such a writ?

And no less surprising is what they insinuate, as the reason of their confidence in your Majesty, that you would hearken to such an address, that they have given dispatch to the supplies: They proceeded surely in the matter of the supplies, with a nobler aim, for the safety of your Majesty's crown and person, and for the delivering the kingdom from the oppression of *French* power employed to set an unjust Pretender upon your Majesty's Throne.

These are good reasons for disposing of the people's money. Their liberties, and all that is valuable to them, depend entirely upon the good success of the war, and they have used, in all ages, to part freely with their money, for the defence of their liberties and properties, and the removing of grievances and oppressions.

But this is the first time a House of Commons have made use of their having given the people's money, as an argument why the Prince should deny writs of right to the subject, obstruct the course of justice, and deprive them of their birth-rights.

On

On the twenty-sixth of *February*, the House of Commons proceeded to carry on their resentments to greater extremities, and voted, that the gentlemen who pleaded as Council for the five prisoners, upon the returns of the writs of *Habeas Corpus*, and the Agents and Solicitors who assisted them, were guilty of a breach of privilege, and ordered them to be taken into custody, which order has been executed.

This seems to be so great an excess, that it is hard to find words proper for expressing it. When *Cromwell* committed Mr. *Maynard* to the *Tower*, for assisting one *Coney* as his Council, upon a *Habeas Corpus*, a celebrated author expresses the detestation due to such a fact, in these words: ‘ It was  
 “ the highest act of Tyranny that ever was seen in  
 “ *England*: It was shutting up the law it self close  
 “ prisoner, that no man might have relief from,  
 “ or access to it’.

But as strange and unjustifiable as this appears, we beg leave to take notice of another thing yet more irregular (if it be possible :) While the matter was depending before your Majesty, upon the petitions for writs of error; after the House of Commons had made an address to your Majesty, that you would not give leave for the bringing writs of error; after your Majesty had, by your gracious answer, signified to them, “ That this matter, relating to  
 “ the course of judicial proceedings, was of the  
 “ highest importance, and therefore your Majesty  
 “ thought it necessary to weigh and consider, very  
 “ carefully, what was proper for you to do;” and after they had voted to take this very answer of your Majesty’s into consideration: The day following, they ordered the five prisoners to be removed from *Newgate*, and taken into the custody of the

the Serjeant at Arms attending the House of Commons; and this order was executed at midnight, with such circumstances of severity and terror, as has been seldom exercised towards the greatest offenders.

Your Majesty is the only proper Judge how highly disrespectful this action is to your royal person and authority.

But it concerns us to say, that such a proceeding tends directly to the depriving the petitioners of that justice, which they were endeavouring to obtain by means of the writs of error.

While your Majesty was deliberating how to put an end to a matter, which they only had made difficult by an unreasonable address, the House of Commons rightly apprehended, that justice would prevail with your Majesty over all other considerations, and therefore (as far as possible to disappoint the prisoners, of the fruit they expected from these writs of error when granted) they transferred them, in the mean time, to another prison.

This practice of removing prisoners from one custody to another, has been ever complained of, as manifest oppression, and most evidently destructive of the liberty of the subject: It is a mischief provided against in express words, by the act made in the reign of your royal Uncle King *Charles* the second, *for the better securing the liberty of the subject*; that if any person being a subject of this realm, shall be committed to any prison, or in custody of any officer whatsoever, for any criminal, or supposed criminal matter, that the person shall not be removed from the said prison or custody, into the custody of any other officer (unless it be by a *Habeas Corpus*, or some other legal writ;) and this upon the great penalties mentioned in that act. The penalties in the act were new, but the law of *England* was the same before



before the making it. The shifting of men from one prison to another, while they are using means in course of law to recover their liberty, is inexcusable cruelty, and against the plain rules of natural justice; for by such artifices, imprisonments, however unlawful, might be made perpetual, and the subject, as he was at the point of being discharged from one prison, might be, without end, removed to another.

May it please your Majesty, your dutiful subjects, the Lords spiritual and temporal, were so solicitous to avoid any thing, which might give a pretence to interrupt the necessary and early provision for the war, in order to improve the wonderful successes God had given to your arms: That tho' they were sensible the imprisonment of these men, in the manner, and upon the pretences abovementioned, was a manifest attempt to elude the judicature of Parliament, and of pernicious example, to the liberty and property of the subject, yet they forbore to take notice of it, 'till they were in a manner enforced by petitions from the prisoners, presented the twenty-fourth of *February* last, and by the unjustifiable proceedings of the House of Commons the same day, which we have already mentioned to your Majesty.

But then the Lords found it absolutely necessary, to enter into a consideration of the whole matter, as it appeared to them, and upon the twenty-seventh of *February* they came to the following resolutions.

*Resolved,*

That neither House of Parliament, have power by any vote, or declaration, to create to themselves new privileges,

privileges, not warranted by known law and custom of Parliament.

*Resolved,*

That every freeman of *England*, who apprehends himself to be injured, has a right to seek redress by action at law, and that the commencing and prosecuting an action at the common law, against any person, who is not intitled to privilege of Parliament, is no breach of the privilege of Parliament.

*Resolved,*

That the House of Commons, in committing to the prison of *Newgate*, *John Paty*, *John Oviat*, *John Paton*, *Henry Basse*, and *Daniel Horne*, for commencing and prosecuting actions at the common law, against the late Constables of *Aylesbury*, for not allowing their votes in the election of members to serve in Parliament, upon pretence, that their so doing *was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privilege of that house*, have assumed to themselves alone a legislative power, by pretending to attribute the force of a law to their declaration, have claimed a jurisdiction not warranted by the constitution, and have assumed a new privilege, to which they can shew no title by the law and custom of Parliament, and have thereby, as far as in them lies, subjected the rights of *Englishmen*, and the freedom of their persons, to the arbitrary votes of the House of Commons.

*Resolved,*

That every *Englishman* who is imprisoned by any authority whatsoever, has an undoubted right, by his agents or friends, to apply for, and obtain a writ of *Habeas Corpus*, in order to procure his liberty by due course of law.

*Resolved,*

That for the House of Commons to censure or punish any person, for assisting a prisoner to procure a writ of *Habeas Corpus*, or by vote or otherwise to deter men from soliciting, prosecuting, or pleading upon such writ of *Habeas Corpus*, in behalf of such prisoner, is an attempt of dangerous consequence, a breach of the many good statutes provided for the liberty of the subject, and of pernicious example, by denying the necessary assistance to the prisoner upon a commitment of the House of Commons, which has ever been allowed upon all commitments, by any authority whatsoever.

*Resolved,*

That a writ of error is not a writ of grace, but of right, and ought not to be denied to the subject, when duly applied for, (tho' at the request of either House of Parliament) the denial thereof being an obstruction of justice, contrary to *Magna Charta*.

These resolutions were delivered to the Commons at a conference, the twenty-eighth of *February*, and they took time to consider of them 'till the seventh of *March*, upon which day, at their desire, a second conference was had, and tho' it was too apparent by what was delivered by the Commons at that conference (which consisted of injurious invectives against the House of Lords, and tedious recitals of precedents, in no sort applicable to the present subject of debate) that their design was either to provoke the Lords to such a degree, as might necessitate them to break off all correspondence, or by engaging them in new matters, to draw things to such a length, as might prevent the bringing these debates to any issue during the session:

on: Yet the Lords immediately desired a free conference, which was afterwards had with the Commons.

We are so desirous that your Majesty should be made fully acquainted with all the passages relating to this dispute between the two houses, that we humbly beg leave to annex to this our representation, what passed at the first and second conferences; and also (as far as we have been capable of recollecting in so short a time) the substance of what was said at the free conference, and in our debates, in maintenance of the resolutions of the House of Lords.

But we take it to be a duty necessarily incumbent on us, to observe to your Majesty, the manner in which we have been treated by the House of Commons, at these conferences; so that from thence your Majesty, according to your great wisdom, may judge to what such proceedings do naturally tend. They told us, that the judicature of the House of Lords was unaccountable in its foundation, and inconsistent with the constitution: If they mean it is so antient, that no account can be given of its foundation, 'tis true; but there is reason to believe it began with the monarchy, and we are sure it has continued without interruption, unless during that unhappy interval, when a pretended House of Commons destroyed the church and the monarchy, as well as the House of Lords: As many ages as the constitution of the *English* government has lasted, this judicature has consisted with it, and formed a noble and necessary part of it, and therefore these gentlemen will hardly be believed, against so long an experience, that it is inconsistent with the constitution.

They also charged the Lords in direct terms, with usurping the hearing appeals, with making



advances upon the constitution, with contriving to bring liberty and property into the bottomless and insatiable gulf of the Lords Judicature, and with direct reproaches, as to the manner in which that judicature has been exercised, and in the most contemptuous way, told us, they forbore to mention the instances, because they hoped we would reform.

We desire no other Judge but your Majesty, how such a treatment of us becomes these gentlemen; and we dare appeal to all your subjects, for witnesses of the irreproachable manner of administering justice in the House of Lords.

We hope the great displeasure the House of Commons has conceived against us may prove of some real service, and of useful caution to your Majesty, for it has drawn them directly to own (what was but too visible before) that they are aiming at more power, and a larger share of the administration, than is trusted with them by the nature of our government. They directly complained, that by the constitution, the judicature, in the last resort, was not placed in the same hands with the legislature, tho' they cannot shew it to be so, in any country where the government is not arbitrary, and the Prince's will the law. They have been long endeavouring to break in upon the Lords share in the legislature, of which we could mention too many instances to your Majesty. From an antient claim, that aids to the crown are to begin in the House of Commons, and that the Lords could not alter the sums, they have of late years pretended (but without any reason, and against the known usage of Parliaments) that we could make no alterations in any parts of a money-bill, tho' it have no relation to the money: And upon that foot, when they have had a mind to get any thing passed into a law, of the reasonableness of which they have dispaired

to

to convince the Lords, they have tacked it to a money-bill, in order to put the Crown and the Lords, under that unhappy necessity, either to agree to a law they might think prejudicial to the publick, or to lose the money, which perhaps, at that time, was absolutely necessary to the saving the kingdom.

By this method they assume to themselves the whole legislative authority, taking in effect the negative voice from the crown, and depriving the Lords of the right of deliberating upon what is for the good of the kingdom: For this reason the Lords had, in a very solemn manner, resolved never to suffer such impositions for the future, let the importance of the bill be never so great. This resolution was well known, and yet in this present session (as appears by the printed votes of the twenty eighth of *November* last) a great number of the gentlemen of the House of Commons, to the manifest danger of disappointing the supplies of the year, which must have been the ruin of the whole confederacy, and delivering up of *Europe* into the hands of *France*, made an attempt to tack to the land-tax, a bill which had been rejected in two precedent sessions of Parliament.

Thus the House of Commons have formerly set on foot several attempts, against that share in the legislature which is placed in the Lords: But this is the first time they have published their desire, to be let into the judicature of Parliament.

Whatever they would insinuate upon this occasion, we desire not to meddle with the choice of the Commons representatives, we willingly leave that matter where it is, and in what manner it is exercised there; how impartially and how steadily, is so well known by experience to most parts of the kingdom, and so universally understood, that the people will be extremely desirous their estates and properties should be subject to such determinations.

It is not strange the free conference ended without success, when the Commons came to it with such a temper, as appears by the votes of the eighth of *March*, made after they themselves had consented to the free conference. If those votes had been published soon enough, it would have fully convinced the Lords, how vain a thing it was to confer with them further, upon the matters in debate at the former conferences; for not content with what they had done before, upon information that their Serjeant had been served with two writs of *Habeas Corpus*, returnable before the Lord Keeper, in behalf of Mr. *Mountague*, and Mr. *Denton*, two of the gentlemen who had been of council with the five prisoners, they came to a resolution, that no Commoner, committed by them for breach of privilege, or contempt of the house, ought to be by *Habeas Corpus*, made to appear before any other judicature, and required their Serjeant to make no return, or yield any obedience to those writs; and that for such refusal he had the protection of the House of Commons.

It has been always held the undoubted prerogative of the crown, to have an account of the reason why any subject is deprived of liberty, and it has ever been allowed, that by the known common law, it is the right of every subject under restraint, upon demand, to have his writ of *Habeas Corpus*, and thereupon to be brought before some proper court, where it may be examined, whether he be detained for a lawful cause: And the statutes made in the reign of your royal grandfather, and your royal uncle, have enacted, that in all cases, writs of *Habeas Corpus* be granted and obeyed, by the respective officers, upon great penalties.

But these votes import a direct repeal of those laws, as to all persons committed by the House of Commons,

It is no longer worth disputing, whether a person committed by them, tho' for a fact which appears to be both lawful and necessary, may be delivered by any court; for by this new law he shall never be brought thither, and the Serjeant is not only warranted, but commanded openly to condemn your Majesty's royal writs of *Habeas Corpus*, brought upon the act of the one and thirtieth of King *Charles* the second, which is an invasion of your prerogative, never before heard of in *England*.

Your Majesty does not claim an authority to protect any of your officers for disobeying a known law. The *Habeas Corpus* act, in times of eminent and visible danger, was in the late reign suspended by acts of Parliament for some short time, and yet (so sacred was that law held) that those acts passed with great reluctance, and one of the arguments that prevailed most for agreeing to that temporary suspension, was, that it would be an unanswerable evidence to all future times, that this act could never be suspended afterwards, by any less authority than that of the whole legislature. But we live to see a House of Commons take upon them to suspend this law by a vote.

They ordered, that the Lord Keeper of your great seal should be acquainted with their resolutions, to the end the writs of *Habeas Corpus* may be superseded, as contrary to law, and the privileges of their house. They are contrary to no law, but that of these votes, which surely are none of the laws the Lord Keeper was sworn to observe: But yet he is to act at his peril. They have ordered this law to be published to him by their clerk.

The Lord Keeper is a Commoner, and if he disobeys, 'tis a breach of privilege; and if they should carry it so far, as to order him into custody, he may seek, but is not to have relief from any *Habeas Corpus*.



We humbly beg pardon of your Majesty for this long and melancholy representation, which we could not avoid, without being guilty of treachery to your Majesty, and to our native country. The five persons immediately concerned are but poor men; but we well know your Majesty's justice and compassion extends itself to the meanest of your subjects.

The matters in dispute are of the highest consequence: Your Majesty's prerogative, the reverence due to laws, and the liberties and properties of all the people of *England* are concerned, and at stake, if these encroachments prevail.

We do not pretend to solicit your Majesty to put a stop to these innovations, your own wisdom will suggest the most proper methods: We have endeavoured to do our duty, in laying the whole matter before you.

We humbly beg leave so far to resume what has been said, as to present to your Majesty a short view of the unhappy condition of such of your subjects, as have right of giving votes for choosing members to serve in Parliament, which has been hitherto thought a great and valuable privilege; but by the late proceedings of the House of Commons, is likely to be made only a dangerous snare to them, in case they who may be hereafter chosen to serve in Parliament, shall think fit to pursue the methods of this present House of Commons.

If they refrain from making use of their right in giving their votes, they are wanting in their duty to their country, by not doing their parts towards the choosing such representatives as will use their trust for the good of the kingdom, and not for the oppression of their fellow subjects.

If the officer, who has the right of taking the suffrages, refuse to admit them to give their votes, they must either sit down by it, and submit to be wrongfully and maliciously deprived of their rights;

or if they bring their actions at law, in order to assert their rights, and recover damages for the injury (as all other injured men may do in like cases) they become liable to indefinite imprisonment, by incurring the displeasure of those who are elected.

If, being thus imprisoned, they seek their liberty by *Habeas Corpus*, (the known remedy of all other subjects) they do not only tie their own chains faster, but bring all their friends and agents, their solicitors and council, into the same misfortune with themselves.

If they think themselves to have received injury by the judgment of the *Habeas Corpus*, and seek relief by writ of error, (the known refuge of those who suffer by any wrong judgment) all that assist them in that matter, are likewise to lose their liberties for it, and they themselves will be removed to new prisons, in order to avoid the justice of the law.

We humbly conclude with acquainting your Majesty, that we have been informed, by the petition of two of the prisoners, that they have been long delayed, tho' they have made their applications in due manner for writs of error: We are under a necessary obligation, for the sake of justice, and asserting the judicature of Parliament, to make this humble address to your Majesty, that no importunity of the House of Commons, nor any other consideration whatsoever, may prevail with your Majesty to suffer a stop to be put to the known course of justice, but that you will be pleased to give effectual orders for the immediate issuing of the writs of error.

*Die Mercurii, 14 Martii, 1704.*

Her Majesty's most gracious ANSWER to the  
ADDRESS.

My Lords.

*I Should have granted the writs of error desired in this address: But finding an absolute necessity of putting an immediate end to this session, I am sensible there could have been no further proceeding upon that matter.*

Ordered by the Lords spiritual and temporal in Parliament assembled, that the humble thanks of this house be presented to her Majesty, for her most gracious answer, in which she has expressed so great a regard to the judgment of this house, so much compassion to the petitioners, and such tenderness to the rights of the subject.

The same day the Queen came to the house, and put an end to the sessions, and the Lord Keeper prorogued the Parliament to *Tuesday* the first of *May*, which put an end to this affair.

The substance of what was offered by the Lords, at the first and second conferences with the Commons, being already printed in the proceedings of the Commons, is the reason it is not here again inserted.

*Some of the arguments that were made use of by the Lords in their debates, and at the free conference, to maintain their own resolutions, and answer the objections of the Commons.*

The House of Commons made two objections to the manner in which the Lords proceeded at the first conference: They said, they had anticipated all debates, by delivering positive resolutions, whereas  
this

this is the proper and ordinary method of proceedings between the two houses; when one house has formed an opinion, they communicate it to the other, to the end that if it be found reasonable, it may be approv'd; or, if upon examination it be disliked, the causes of the disagreement may be shewn, in order to convince the other house of their mistake.

The second objection made to the manner of the Lords proceedings was, that the resolutions were grounded upon the petitions of criminals, who had fallen under the just displeasure of the Commons, and upon a printed paper not regularly before the House of Lords.

As to the first part of the objection, the Lords did, (as just judges always do) consider the matter of the petitions, and not the persons of the petitioners. And as to the second part, the Lords said, the printed paper mentioned by the Commons, was the votes of the House of Commons, of the 24th of *February*, signed by the Speaker. If the Commons had disowned that paper, there had been some weight in this objection, but if they think it regular to print and publish their votes to the people, the Lords will always think it regular to take notice, and make use of those papers, as they see occasion: And it seemed strange for the Commons to object to the taking notice of their votes, when the only colour they have hitherto pretended for their first displeasure at the five prisoners, was, that they did not take notice of some votes of theirs, (which they call their declaration,) made during their last session. And the printing their votes is the only method they have yet taken, for the promulgation of the new laws they take upon them to make.

The Lords had no occasion to say any thing in defence of their first resolution, because the Commons did not think fit to avow in words, that they had a power to create new privileges by their votes, though



though they have manifestly attempted it in practice, and particularly in the case of the five prisoners.

As to the unjust reflections which the Commons made upon the House of Lords, as if they had entertained original causes, and were guilty of some encroachment in hearing appeals from courts of equity.

The Lords avowed their claim of jurisdiction, in hearing and determining appeals from courts of equity, and could shew a continued exercise of it, more ancient than the determination of elections in the House of Commons, which yet the Lords do not go about to call in question; but they deny their having meddled with any original causes, or that the case particularly mentioned by the Commons, was at all of that nature.

The Lords did not understand what the Commons meant, by saying, the Lords had founded their second resolution upon an extrajudicial vote. The judgment in the case of *Ashby* and *White*, was given with great deliberation, and founded upon undeniable reasons and unquestionable authorities: And the Lords condescended so far in that matter, as to direct the state of that case, and the grounds of that judgment, to be drawn up and printed.

2. The second resolution of the Lords consists of two assertions: *First*, That every man who apprehends himself to be injured, has a right to seek redress by action at law. *Secondly*, That the prosecuting actions at the common law, against any person, not intitled to privilege of Parliament, is no breach of privilege.

What the Commons objected to the universality of the first part of that resolution, as if it would destroy all distinctions of courts, and make a confusion of jurisdictions, did arise only upon a plain mistake. The Lords mentioned actions in general, without confining what they said to actions at common law,

or

or affirming that actions for all sorts of injuries, may be brought in any one court.

As to the insinuation that the Lords had no other aim than to extend their own jurisdiction, by the seeming regard and tenderneſs they ſhewed for the rights and liberties of the people; the answer is, The only juſt way of interpreting men's meaning, is by obſerving what they act.

The Lords have acted with true regard to liberty and property on this occaſion, as well as in all others: They have voluntarily owned themſelves to be reſtrained, at the ſame time they deſire the Commons not to go about to create new privileges; The Lords claimed nothing new; and the Commons cannot, with reaſon, deſire them to give up what the law and the conſtitution hath placed in them, the judicature in the laſt reſort.

The principal thing inſiſted upon by the Houſe of Commons againſt this reſolution, was, that there are privileged caſes, as well as privileged perſons; but they did not think fit to give any inſtances of ſuch privileged caſes, as were any ways applicable to the matters in diſpute, that is, that were ſo entirely of the conſuſance of the Houſe of Commons, that the bringing an action at common law in thoſe caſes was a contempt to the Houſe of Commons: And unleſs that could be done, this diſtinction of privileged caſes from privileged perſons, will have no weight to juſtify the commitment of the five *Aileſbury* men: If men miſtake and bring actions in *Weſtminſter-Hall*, for matters cognizable in Parliament, ſo that they can have no relief in the courts below, it does not follow from thence, that they ought to be committed for breach of privilege on that account.

The determination of elections is admitted to be the buſineſs of the Houſe of Commons, and yet it is certain the the proſecuting actions, at common law, for falſe and double returns, was never thought to be a contempt

contempt to the House of Commons, nor was any body punished or committed upon that account, in the cases of Sir *Samuel Barnardiston* and Mr. *Onslow*.

The freedom of speech in Parliament, is the most necessary and the most acknowledged privilege of the House of Commons: And yet when an information was brought in the King's-Bench, against Sir *John Elliot* and others, for words spoken in the House of Commons, and judgment was given against them in that court, the Commons did not think it sufficient to condemn that judgment by votes of their own house, but brought those votes up to the Lords, and desired their concurrence, which was given, and immediately thereupon a writ of error was brought in Parliament, and the judgment regularly reversed there: And it cannot be denied, that, upon this occasion, the most valuable privilege of the House of Commons was brought under the judgment of the Lords, as well in their judicial, as in their legislative capacity.

The case of *Richard Strode*, and the act of Parliament which passed upon that account, in the fourth year of King *Henry* the eighth, was that which was principally insisted on by the House of Commons, in the case of Sir *John Elliot*, for justifying their undoubted privilege of freedom of speech, and shewing the injustice of what was done in that case by the court of King's-Bench.

The case of *Strode* might be used by the Lords as another instance to shew, that this distinction of privileged cases will not serve the purpose of the House of Commons, to justify the commitments of the *Ailesbury* men. He was prosecuted in the *Stannary* courts for words spoken, and bills offered in the House of Commons, in order to be passed into laws, and upon that account was imprisoned and condemned to pay considerable sums, and petitioned the House of Commons to be relieved in that matter; the House of Commons did not then pretend to

put

put a stop to those suits, or to commit the persons concerned in them, but thought the only remedy against those prosecutions, and others of like sort, was to prepare a bill in order to be passed into a law, for making void the judgments against *Strode*; and took that occasion by the same bill, to declare the law in general, and to give an action to all persons who should be afterwards vexed or molested for the like causes, in which they should recover treble damages, and costs of suit.

There is no case that can be more properly called a privileged case, with respect to the House of Peers, than the determining of peerage, and yet if that matter comes to be incidently a point, in any case depending in the courts of *Westminster-Hall*, they must proceed to determine of it, as they think the law to be; and the Lords have not gone about to hinder it, nor found fault with them upon that account.

The courts in *Westminster-Hall* must of necessity judge of the privileges of Parliament in many cases: When any person prays a writ of privilege, (which was always the way anciently when men desired the benefit of privilege, and it is often practised yet upon occasion,) the court where the writ is prayed must judge, whether the party has right to privilege or not.

Suppose the Serjeant of the House of Commons should kill, or be killed, in the execution of a warrant of that house, upon an indictment for murder, the court must necessarily judge of the legality of the warrant.

The Commons supposed cases of affronts to the person of the Speaker, or of reproachful words spoken of the whole House of Commons, are instances of what they called privileged cases.

There is no doubt, but either of these cases would be contempts, and such as might be punished by the house; but most certainly, these were also such offences as might be prosecuted in *Westminster-Hall*; and



and if the Attorney-general should bring informations upon them, it could never be pretended, that he would be guilty of a breach of privilege of the House of Commons.

It was urged, that in privileged cases, the votes of the House of Commons were like prohibitions to the ecclesiastical courts, and that when prohibitions were served upon the Judges in the admiralty or ecclesiastical courts, it was a contempt for them to proceed farther.

The answer to this is, That prohibitions to the ecclesiastical and admiralty-courts, were founded upon a particular reason: The proceedings in those courts are according to the civil, or canon law, and therefore it was necessary to preserve the constitution, and restrain those courts from making invasions upon the common law, that a guard should be set upon them, and a power fixed to restrain them; and this power is lodged in the courts of *Westminster-hall*, who are trusted with the issuing writs of prohibition to the ecclesiastical and admiralty-courts, from time to time, upon complaints made to them: And these writs of prohibition, must be served personally upon the Judge of the admiralty, or the ecclesiastical Judges, who will be liable to attachments if they proceed after such service, until such time as they have shewn the nature of the suit to the courts from which the prohibition issued; and if the suit be properly of ecclesiastical, or admiralty-consequence, the court must grant a consultation, whereby they are at liberty to proceed again. This is a known and settled method of legal proceedings; but the votes of the House of Commons were never yet resembled to the Queen's writs: No court is bound to take notice of them; on the contrary, the Judges are bound not to take notice of them; but to act according to the known law: No body has power to prohibit the courts in *Westminster-hall*, the Judges there are sworn to proceed to do justice, notwithstanding any command

command under the great seal, or privy seal, or by any other authority whatsoever : And the subjects of *England* have no longer an inheritance in the common law, if the Judges are to take notice of the votes of either House of Parliament, and regulate their judgments accordingly.

The votes would not always be uniform in either house, and it appears by the present dispute, that the two houses might often differ in matters of importance, and the Judges would be under difficulty which of the houses to obey : And if they yielded obedience to both, they would be obliged to act very contradictorily.

3. What was said against the third resolution of the Lords, was, first, that thereby the Lords took upon them to judge of the Commons privileges ; To this it was said, that if the House of Commons, under the name of privilege, would proceed to do things inconsistent with the known prerogatives of the crown, with the known privileges of the Lords, contrary to the laws, or destructive to the liberties of the people, the Lords were bound to tell them, these were not their privileges. If by saying, they only are Judges of their own privileges, they would deprive the crown and the Lords from taking notice of manifest innovations, and objecting to them, as there was occasion, the Commons might take to themselves the whole government without controul.

They were challenged to produce precedents to warrant the commitments of men, only for proceeding in suits at law against those who had done them wrong, and had no pretence of privilege.

The Lords did not dispute the power of the Commons, in examining and determining the election of their own members, nor of enquiring into all matters relating to the determination of that question, particularly their examining into the qualifications of electors, and agreed that what they determined would be binding, as to the right of the member to sit in

the house: But that determination would not bind the right of any elector, for he was no party to that dispute of the election, he was not heard for himself, nor was his cause in agitation before the house; and the action brought by the elector has no manner of relation to the sitting of the member, but is only for recovery of damages, upon account of the particular injury done him by the officer at the election.

Suppose there was a contest about two persons, which was Mayor of a town, the court where that cause was tried, in order to a determination of the right, must perhaps examine into the rights of those who voted; but would it be pretended, that the electors would be bound by the opinion of the court in that case, and that they could not bring their actions to recover damages against the officers who wilfully refused their votes, however the question was decided as to the Mayor: So that it was begging the question to pretend, that because the House of Commons can try the right of the member to sit, therefore they only have a power to decide finally the rights of the several electors.

There is no weight in the objection, that if these suits were allowed, the officers who are obliged to take the poll, would be exposed to multiplicity of actions.

The law is so in all cases of elections of officers: He who is to take the poll, is bound to do his duty at his peril: If he acts with an honest intention, tho' he should be guilty of a mistake, he is in no danger, for no Jury ought to find him guilty: But if an officer wilfully and maliciously refuses to admit those who have right to give their votes, every one of them may sue him in any proper court as they see cause; and the more he wrongs, the more he ought to suffer. And which would be the greater mischief, that the officer who does injustice should be subject to actions, or that he should be at liberty to reject as many rightful votes as he thinks fit, with-

out

out being liable to make any reparation, and which is the part a House of Commons ought to take? The Lords observed, that the natural order of things seemed to be quite inverted in this dispute; the House of Commons were taking part against the freedom of law, against the liberty of mens persons, and against the right of their electors.

As to the several precedents insisted upon, they conclude nothing to the present question, every one of them relating to the right the House of Commons claims, of determining the elections or returns of their members, which they are in the quiet possession of; and the general expressions which are found in the relation of these precedents can be understood only with respect to the subject matter of those cases.

\* The first precedent, in the 28th of *Queen Elizabeth*, is of a double return for the county of *Norfolk*. Tho' the Lords do not deny, that such cases are proper to be determined by the House of Commons; yet this precedent does not go far towards asserting their right, for in that case the second writ was quashed by the Chancellor and Judges, before the determination made by the House of Commons: And in the citing this precedent, they have not rightly stated the words of the Queen's message, or of the resolutions of the House of Commons, as will appear by *Sir Simon D'Ewe's* journal; and they could not say they had any original journal of that time.

As to the second precedent they cited, which is the case of *Sir Francis Goodwin*, in the first year of King *James* the first, which they made use of to prove their own power of determining elections, and that they were not to give an account of their proceedings therein to the Lords: It appears by their own journal, that they had not stated that case fairly; and that in fact the Lords, at the desire of the Commons themselves, were mediators between them and the King in that dispute, and that the Commons at last yielded the point, and notwithstanding their de-



termination in favour of him, submitted, that a new writ should issue for choosing a member in the place of Sir *Francis Goodwin*. And tho' there be mention in the journal, of a letter wrote by Sir *Francis Goodwin*, desiring, that this third writ should issue; yet that could make no difference in the case, for it will not be pretended, that a member could give up the right of his electors, and the judgment of the house.

But all this makes nothing to the justification of the commitment of the *Aylebury* men.

The precedent cited in 1672, relates only to the right of issuing writs for the election of members, during the continuance of the Parliament, the ordering of which was voted to be in the House of Commons only, and is not at all disputed at this time.

The Lords never disputed the Commons power of committing for breach of privilege, as well persons who are not of the House of Commons, as those who are; the question is only, whether a matter that has no relation to the sitting of any member in Parliament, may be made a breach of privilege, by being called so in a vote, or having that name given to it in a warrant of commitment: That is, in other words, whether they have power to create to themselves new privileges by their votes; for they will never be able to prove an usage, of committing men for resorting to law in such cases, and it will be hard for them to convince those whom they represent, that this arbitrary oppressing poor men, is, or can be understood to be, only an interposing to preserve the rights and liberties of the people of *England*.

4. The Commons did not deny the Lords fourth resolution, otherwise than by saying, that the application was to be made to the proper place, and that where the commitment is by the House of Commons, there is no place to apply to for liberty but that house.

The

The Lords thought this to be a position very fatal to liberty; for it places an arbitrary and absolute power of commitment in the House of Commons. Tyranny may be in many as well as in a single person; the thirty tyrants of *Athens* carry that name with as heavy an imputation as any single person.

The Lords never said, that every prisoner that brings his *Habeas Corpus*, ought to be discharged, or that there are not cases excepted out of the *Habeas Corpus* act: What they insist upon is, that a prisoner brought before a proper court by *Habeas Corpus*, where it does appear that the matter that he stands committed for is no crime in law, ought to be discharged, by whatsoever authority he was committed, or by whatsoever name the fact is called in that commitment.

Several precedents were mentioned by the Commons. *First*, the case of one *Jones*: But it did not appear who he was, or what his case was, nor who would have taken him from the Commons; and therefore there can be no pretence to draw any inference from such a precedent.

The Lords wondered to find any weight laid on the votes passed in the year 1675. it is well known the kingdom was at that time generally grown weary of that Parliament, which had been continued above thirteen years; and there was a great number in both houses, who watched for any advantage to make their longer continuance impracticable.

And there happening a question at that time, whether there might be a proceeding in appeals before the House of Lords, in cases where members of the House of Commons were parties; this was so managed, that in about a month's time matters were grown to such a height between the two houses, that all correspondence was in a manner broken off between them; and they proceeded to make such

votes, and to do such acts, from day to day, on either side, as they thought would most provoke.

The Commons cited some of these votes, which were passed in their house towards the height of the contest, and the Lords might as well have cited other votes of the House of Lords, in contradiction to them, which were altogether as high, and are at least of as much authority as those of the House of Commons: So that it is hard to imagine, what use there can be of citing such precedents, which did occasion two prorogations, one after the other, and must always have as bad consequences whenever they are followed.

The House of Commons took the same exception to the Lords fifth resolution, as they did to the third; that they therein made themselves Judges of the privileges of the House of Commons; and the Lords contented themselves with giving them the same answer.

What the House of Commons said in respect of their censuring and punishing the council, who pleaded at the *Queen's-Bench* bar, upon the return of the *Habeas Corpus* in behalf of the prisoners, seemed very remarkable; that it was, because they were not so modest as to acquiesce in the opinion of the Lord-Keeper and the Judges, that the prisoners were not bailable by the *Habeas Corpus* act; and they would not have taken notice of them, but because they would not rest satisfied, but would bring on the cause again, where the privileges of the House of Commons were, with great licentiousness of speech, denied and insulted in publick court, without any hopes or prospect of relief of the prisoners, but in order to vent new doctrines against the Commons.

This seemed to be a kind of excuse for the committing of the council, but it does in no sort agree with the votes relating to this matter, which passed in general terms, and may be cited for precedents hereafter, for committing council (with as good

reason as the votes in 1675.) when these secret motives, which induced the House of Commons in this case, will not appear.

The vote of the 24th of *February* ordered the Committee to examine, what persons had been concerned in pleading upon the writ of *Habeas Corpus*, not what was said by council in their pleadings; and the votes against the several Gentlemen of the 26th of *February*, are, that by pleading upon the return of the *Habeas Corpus* on behalf of the prisoners, they were guilty of breaking the privileges of the House of Commons. It does not appear that there was any complaint of what they said, at least there was no vote against them for their words; and indeed, if the charge against them had been for words supposed to be spoken, it would have been an unaccountable hardship to have hurried them into custody, without ever bringing them to the house to hear their accusation, or to be heard as to what they had to say for themselves.

It does not appear that these Gentlemen were ever heard, or indeed were at all concerned, as to the writs of *Habeas Corpus* brought before the Lord-Keeper and the Judges in the vacation time: But suppose they had, and suppose they were satisfied, that as the *Habeas Corpus* act was drawn, these men might not be so clearly bailable by the Judges in vacation time, by virtue of these writs, which were formed upon that statute; and yet they might be of opinion, that the prisoners had a reasonable prospect of obtaining relief upon writs of *Habeas Corpus* brought at common law.

If they thought so, it was not upon slight grounds, as appeared by the consequence; for the Lord Chief Justice of the court of *Queen's-Bench*, whose learning and judgment is well known, and as universally esteemed as his integrity, was clearly of opinion, that they were entitled to the relief they prayed for their clients.



The Commons may give what hard words they please to these gentlemen appearing to plead in behalf of the prisoners, upon the writs of *Habeas Corpus*; they may call it inveteracy shewn to the Commons, and a conspiring to make a difference between the two houses, and to disturb the peace of the kingdom: But after all that can be said, the fact will be only, that four gentlemen, Lawyers by profession, retained in a case of liberty upon a *Habeas Corpus*, brought by five poor prisoners, did their duty in their profession; and for so doing, were themselves imprisoned by the House of Commons, and denied the benefit of the *Habeas Corpus* act. And this the House of Commons called, *doing right to their body*.

No Lawyer has suffered for serving his client, even against the crown: If the learned in that profession may safely open the laws, when the prerogatives of the crown are in question, it will seem very hard they should be punished for doing it in a case of privilege. To deprive men under restraint, of the assistance of their friends, exceeds the severity of any court but that of the *Inquisition*, the very name of which, ought to strike all *Englishmen* and protestants with horror.

The last resolution of the Lords was not contradicted by the House of Commons; and therefore the Lords took it for granted, that as it was no longer contested, but that a writ of error is a writ of right, and not of grace; consequently, that the Commons did no longer insist upon that part of their address, that the Queen would not give leave for a writ of error.

As to what was said by the Commons, that it was not material whether writs of error were of grace or not, because they did not lie in the case of the petitioners: The Lords said, that whether the writs of error could be maintained or not in point of law,

was

was not of the conuſance of the Houſe of Commons, nor the matter in diſpute between the two houſes.

The iſſue of this long conteſted affair was this, The Houſe of Lords, by a great majority, ſet aſide the Order of the *Queen's-Bench*, and gave judgment according to the verdict given at the aſſizes. This gave great offence to the Houſe of Commons, who paſſed very high votes upon it, againſt the men of *Ayleſbury*, as guilty of a breach of their privileges, and againſt all others, who ſhould for the future bring any ſuch ſuits into courts of law; and like- wiſe againſt all Council, Attorneys, and others, who ſhould aſſiſt in any ſuch ſuits; and they affirmed, that the whole matter relating to elections be- longed only to them: Yet they did not think fit to ſend for the man, who had ſued, or rather, in whoſe name the ſuit was carried on; ſo they let the matter as to him fall, under a ſhew of moderation and pity, and let it reſt upon thoſe general votes. The Lords, on their part, ordered the whole ſtate of the caſe to be drawn up and printed, which was done with much learning and judgment; they alſo aſ- ſerted the right, that all the people of *England* had, to ſeek for juſtice in courts of law, upon all ſuch occasions; and that the Houſe of Commons, by their votes, ſtruck at the liberties of the people, at the law of *England*, and at the judicature of the Houſe of Lords; and they ordered the Lord Keeper to ſend a copy of the caſe, and of their votes, to all the She- riffs of *England*, to be communicated to all the bo- roughs in their counties. The Houſe of Commons was much provoked with this, but they could not hinder it; the thing was popular, and the Lords got great credit by the judgment they gave; which let the people of *England* ſee, how they might be redreſſed for the future, if they ſhould meet with the injuſtice, the partiality, and other ill practices, that had

had appeared of late in elections, even beyond the examples of former times.

*The PROCEEDINGS  
in the House of Peers and House of Com-  
mons, on the Case of CHARLES BATHURST,  
Esq; (mentioned in the foregoing proceeding)  
in January, 1703.*

*Jovis 20 die Januarii, 1703.*

A Petition of *Charles Bathurst, Esq;* was presented to the House of Commons, and read, touching an order made by the House of Peers, the twelfth of *February, 1702*, with relation to an order made by the court of *Exchequer*, the fifteenth of *July, Decimo tertio regni regis Gulielmi tertii*, concerning an inquisition and survey of the boundaries of the honour of *Richmond*, and Lordship of *Middleham*; and of many other honours, manors, and Lordships, bounding thereupon; and praying such relief on the subject matter of the said petition, as shall be thought fit.

*Ordered,*

That some members be appointed to search the journals of the House of Peers, as to their proceeding touching the matter aforesaid, and also the offices of the court of *Exchequer*, touching the proceedings there, in relation to the said inquisition, and report the same to the house.

And several members were appointed accordingly.

*The*

*The* C A S E of C H A R L E S  
B A T H U R S T, *Esq*; *Petitioner, to the*  
*honourable the Knights, Citizens, and Bur-*  
*gesses, in Parliament assembled, in order to*  
*his relief, against certain proceedings in the*  
*House of Peers, at the instance of the right*  
*honourable, THOMAS Lord WHARTON,*  
*appellant, from an order of the Court of*  
*Exchequer, bearing date the 15th day of*  
*July, 1701, against ROBERT SQUIRE, Esq;*  
*respondent.*

July 15, 1701.

**T**H E court of *Exchequer* made an order *ex officio*, for the preservation of a record of that court.

Nov. 9, 1702. The Lord *Wharton*, finding that the said record was made use of as evidence against him, in a trial at the *Queen's-bench-bar* of an issue directed out of *Chancery*, wherein the said Lord *Wharton* was plaintiff, and the said petitioner Mr. *Bathurst*, the said Mr. *Squire*, and others, were defendants, concerning some lead-mines, did, on the 19th of *December*, 1702, petition the House of Lords (by way of appeal) from the said order of the court of *Exchequer*, and prayed to have that order discharged, and the record taken off the file.

In which petition the Lord *Wharton* complained, that the said record was imposed on the court (by contrivance between the said Mr. *Squire* and Mr. *Thomson*, a sworn Clerk in the court of *Exchequer*) and therefore prayed, they the said Mr. *Squire* and  
Mr.



Mr. *Thomson* might answer the said petition (which he called an appeal) and accordingly they were ordered to answer the same.

Jan. 7, 1702. Mr. *Squire* and Mr. *Thomson* petitioned the House of Lords, setting forth, that no suit was ever depending in the court of *Exchequer* between the Lord *Wharton*, and the said Mr. *Squire* and Mr. *Thomson*, and that therefore the Lord *Wharton's* said petition was not an appeal, but an original complaint against them for a crime of a high nature, for which they ought to be left to be tried by the usual course of the laws of the land; and prayed their Lordships to dismiss the Lord *Wharton's* petition, and to discharge their order, by which they the said Mr. *Squire* and Mr. *Thomson* were obliged to answer the same.

Jan. 21, 1702. the Lord *Wharton* put in his answer to their petition, insisting on his appeal as regular, and alledging that there was a suit in *Chancery*, wherein the said Mr. *Squire* was a defendant (among others) concerning the lead mines in question, and that the order made in this case (tho' in the court of *Exchequer*) affected the suit in *Chancery*; and he then obtained an order to hear one Council on each side the very next day.

Jan. 22, 1702. Council were heard, and their Lordships were pleased (on debate) to dismiss the petition of the said Mr. *Squire* and Mr. *Thomson*, and to order them to answer the Lord *Wharton's* petition (or appeal) on *Monday* then next following. Against which proceedings several of the Lords entered their dissent (or protest) and gave reasons for their so doing in the words following, viz.

*First,*

*First*, " We conceive that by this we assume a jurisdiction in an original cause, for these reasons :

*1st*, " Because there has been no suit between the parties in the *Exchequer* ; and consequently this petition cannot be called an appeal from that court.

*2dly*, " Altho' there was a suit in the court of *Chancery*, yet one of the persons required to answer was not a party in that suit ; and therefore as to him (at least) it must be an original cause.

*3dly*, " Tho' all had been parties in the *Chancery*, yet it never was heard, that an appeal lay from one court that had no suit depending in it, because there was a suit depending in another court.

*Secondly*, " Because no court can take any cognizance of a cause in which that court cannot make an order ; but in this case, the House of Lords cannot make an order (because very many are concerned in this record, who are not before this house) therefore this house cannot take any cognizance of it.

*Jan. 25, 1702.* The Lord *Wharton* acquainted the house, that he was willing to leave out *Thomson*, and did only expect *Squire* should answer his petition, and thereupon he obtained an order to that purpose.

*Feb. 2, 1702.* Mr. *Squire* put in his answer, still insisting, as he had done in his said petition, that it was an original complaint against him, and could not be called an appeal, there being no suit depending

ing in the court of *Exchequer*, between the Lord *Wharton* and him, and that the record, \* (which the Lord *Wharton* would have suppressed) not only greatly concerned her Majesty, but the inheritances of several thousands of persons, who are equally concerned, (if not more than he) in the preservation thereof, and that it was more immediately incumbent on the Barons of the court of *Exchequer*, to justify their own order; and therefore prayed their Lordships would not proceed further against him, 'till all parties concerned might be duly heard.

*Feb. 8, 1702.* The city of *London*, who are grantees from the crown of the whole honour of *Richmond*, and Lordship of *Middleham*, finding themselves interested in the preservation of the said record, petitioned the Lords, to be heard by their Council against the petition of the Lord *Wharton*, and their Lordships accordingly ordered Council to be heard for the city, on the twelfth of *February*, being the same day that the Council for the said Mr. *Squire* were to be heard.

*Feb. 12, 1702.* Their Lordships heard Council for the Lord *Wharton* and Mr. *Squire*, (but refused to hear Council for the city, notwithstanding their said order) and thereupon were pleased to order a trial at bar in the court of *Common-Pleas*, the next *Easter* term, by a Jury of *Middlesex*, wherein this was to be feigned issue, viz.

\* *Note*—The record is a survey and boundary of the honour of *Richmond* and Lordship of *Middleham*, which together are much larger than the county of *Middlesex*, and more than one hundred miles in circumference, whereas the boundaries contested by the Lord *Wharton* and Mr. *Bathurst*, are not above two or three miles thereof.

“ Whether

“ Whether the skins of parchment directed by  
 “ order of the court of *Exchequer*, of the fifteenth  
 “ of *July*, 1702, to be filed, are the perfect, unal-  
 “ tered, exact, and intire commission and return,  
 “ first filed in the court of *Exchequer* in the sixteenth  
 “ year of King *James* the first.”

And ordered, that in the said action the said *Robert Squire* should be plaintiff, and take the proof of the said issue upon himself, and the said Lord *Wharton*, defendant, and that the skins of parchment, or any copy thereof, should not be given in evidence in any court whatsoever, until the said trial was over : And that the said skins of parchment (being upon the file, by virtue of the said order of the fifteenth of *July*) should not be allowed as any evidence on the said trial for the plaintiff, and that after the said trial, the verdict given therein should be certified and returned by the court of *Common-Pleas* into the House of Peers.

*Mr. Squire* did not decline the trial of the issue above directed, as being conscious of any ill practices by himself, or any others, or for that he was not able to produce sufficient evidence, to prove that the said record is perfect, unaltered, exact, and entire, as at first filed in the court of *Exchequer*, in the sixteenth year of King *James* the first, (*tho' Mr. Squire could not but think that it was a great hardship to make him plaintiff in the said action, to put the validity of the whole record upon the said issue, and to oblige him to take the proof thereof upon himself, and all this without his consent, or the consent of others, who are more immediately concerned in the preservation of the said record*) there being better proofs, in order to find the said issue truly in the affirmative, to be given for the said record, than for any one of the most authentick records in any of the courts of *Westminster*, (as is very believed) for,

I. In



I. In a decree of the court of *Exchequer* inrolled, made in the nineteenth year of King *James the first*, the said record is cited and referred to, as then on record in the court of *Exchequer*.

II. The said record is entered and inrolled *verbatim*, in the book of inrolments of surveys, &c. kept in a publick office at *Westminster* belonging to the Auditor for *Yorkshire*, and the said entry is near as old as the said record.

III. The said record, and particularly the boundaries of the honour of *Richmond*, and Lordship of *Middleham*, (about which only the disputes are between the Lord *Wharton*, and the said Mr. *Bathurst*, and the other defendants) are fairly entered, and remain on record, in an old book, kept amongst the records of the city of *London*, and the same entry there appears to be made in the year 1628.

IV. Divers ancient office copies (and other copies) of the said record, and particularly the boundaries of the said honour of *Richmond*, and Lordship of *Middleham*, have been taken, and the same were examined with the said record, when on its proper file in the court of *Exchequer*; and certified to be true copies. All which said entries and copies do exactly agree with the said record, now on its proper file. And moreover, there are many other instances, evidences, and proofs of the truth, validity, and entireness of the said record.

But Mr. *Squire* being apprehensive that the House of Peers, in making the said order of the twelfth of *February*, 1702, had assumed a jurisdiction in an original cause, could not (as he believed) comply with that order, without doing injury to the rights and privileges of the Comons of *England*; and

and for that reason, did not think fit to try the issue as directed.

Nov. 9, 1702. *Note*, that at the first trial at the *Queen's-Bench* bar of the issue directed out of *Chancery*, (when the said record was given in evidence) the verdict, upon full evidence, was given and found for the said Mr. *Bathurst*, Mr. *Squire*, and the other defendants; yet the court of *Chancery*, (as is usual where a right of inheritance is to be bound) afterwards directed a second trial to the same end as the former, which came on at the *Queen's-Bench* bar, in *Michaelmas* term last, Nov. 23, 1703.

That at the last mentioned trial, the Council for the plaintiff, the Lord *Wharton*, insisted, that the said Mr. *Bathurst*, and the other defendants, could not give in evidence the said inquisition and survey, (tho' on record in the court of *Exchequer*) nor any copy thereof, by reason the said Mr. *Squire* had not tried the issue directed by the House of Peers, the said twelfth of *February*, 1702.

That by reason of the premisses, the said Mr. *Bathurst*, and the other defendants, were deprived of that so necessary a part of their evidence, for the support of their title to the matters in question, at the said last mentioned trial, and so (and for that reason alone) lost their cause, which otherwise they could not have done; for that the said record (backed with the concurring testimonies of so many ancient and credible witnesses, produced on the said defendants' behalf) must necessarily have convinced the Jury (as some of them have since owned and declared) that the boundaries of the manors of *Helaugh* in *Swaledale*, and of *Arklegarthdale*, are as the said record mentions them to be, and consequently, the issue and verdict must have been

VOL. IV. X found

found for the said Mr. *Bathurst*, and the other defendants.

*Sabbati 22 die Januarii, 1703.*

Mr. *Ward* reported, that the members appointed to search the journals of the House of Peers, and offices of the court of *Exchequer*, as to their proceedings touching the matters mentioned in the petition of *Charles Bathurst*, Esq; presented to the House on *Thursday* last, had searched the journals and offices accordingly, and he read in his place what they found therein, and afterwards delivered the same in at the table, where the same was read.

*Ordered,*

That the consideration of the said report be referred to the Committee of the whole house, to whom the consideration of the report made yesterday, relating to the case of *Ashby* and *White*, is referred.

*Ordered,*

That the same members do search the offices of the court of *Chancery*, for the bills and answers, and order on hearing, made in the said court, between the Lord *Wharton*, and the said Mr. *Bathurst*, and others, and report the same to this house.

*Martis 25 die Januarii, 1703.*

Mr. *Benson* reported, that the members appointed to search the offices of the court of *Chancery*, for the bills and answers, and order on hearing, made in the said court, between the Lord *Wharton* and Mr. *Bathurst*, had searched the same accordingly, and had copies of the bills and answers, and order on hearing; which he presented to the house, and the titles thereof were read: And also touching their  
 Lordships

Lordships proceedings, in the matter mentioned in the petition of Mr. *Batburst*, in which case it was alledged, their Lordships had taken upon them an original jurisdiction, in controlling an order made by the court of *Exchequer*, for the filing of a record, that had been several years in Mr. *Grange's* chamber in the *Temple*.

*Ordered,*

That the consideration of the said copies be referred to the Committee of the whole House, to whom the report, with relation to the petition of the said Mr. *Batburst*, is referred.

*Jovis 27 die Januarii, 1703.*

The order of the day being read, for the house to resolve itself into a Committee of the whole house, to consider further of the report of the journal of the House of Lords, and also of the petition of *Charles Batburst*, Esq; referred to the Committee.

*Ordered,*

That the Serjeant do go with his mace into *Westminster-Hall*, and courts there, and court of *Requests*, and places adjacent, and summon the members there to attend the service of the house.

And he went accordingly, and being returned,

The house (according to order,) resolved itself into the said Committee of the whole house, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. *Freeman* reported from the said Committee, that they had come to some resolutions, which they had directed him to report, when the house will please to receive the same.



*Ordered,*

That the report be made to-morrow morning.

*Veneris 28 die Januarii, 1703.*

Mr. *Freeman* (according to order,) reported from the Committee of the whole house, to whom it was referred, to consider of the report of the journal of the House of Lords, and the petition of *Charles Bathurst*, Esq; the resolutions which they had directed him to report to the house, which he read in his place, and afterwards delivered in at the table, where the same were read, and (with some amendments to the first of them,) agreed unto by the house, and are as follow.

*Resolved,*

That the House of Lords taking cognizance of, and proceeding upon, the petition of *Thomas Lord Wharton*, complaining of an order of the court of *Exchequer*, bearing date the fifteenth day of *July*, one thousand seven hundred and one, for filing the record of a survey of the honour of *Richmond*, and Lordship of *Middleham*, in the county of *York*, is without precedent, and unwarrantable, and tends to the subjecting the rights and properties of all the Commons of *England*, to an illegal and arbitrary power.

*Resolved,*

That it is the undoubted right of all the subjects of *England*, to make such use of the said record, as they might by law have done before the said proceedings of the House of Lords.

After this, the House of Lords took into consideration the proceedings of the House of Commons, and made the following resolution.

*Die*

*Die Lunæ 27 Martii, 1704.*

It is resolved and declared by the Lords spiritual and temporal, in Parliament assembled, that the House of Commons taking upon them by their votes, to condemn a judgment of the House of Lords, given in a cause depending before this house in the last session of Parliament, upon the petition of *Thomas Lord Wharton*, and to declare what the law is, in contradiction to the proceedings of the House of Lords, is without precedent, unwarrantable, and an usurpation of a judicature, to which they have no sort of pretence. \*

*Matthew Johnson, Cler' Parliamentor'*

\* *Die Lunæ, 27 Martii, 1704.* It is ordered by the Lords spiritual and temporal, in Parliament assembled, that the resolution and declaration made this day, with respect to the votes of the House of Commons, in relation to the judgment of this House, given upon the petition of *Thomas Lord Wharton*, the last session of Parliament, shall be forthwith printed and published.

*Matthew Johnson, Cler' Parliamentor'*

## PROCEEDINGS

IN THE

House of COMMONS and House of  
LORDS,

RELATING TO

*James Boucher, Gent. †**Veneris die 17 Decembris, 1703.*

**A** Message from her Majesty, by Sir David  
*Mitchell*, Gentleman-Usher of the black-rod.

Mr. Speaker,

The Queen commands this honourable house to attend her Majesty immediately, in the House of Peers.

Accordingly Mr. Speaker, with the house, went up to attend her Majesty, and being returned, Mr. Speaker reported, that her Majesty had been pleased to give the royal assent to *An Act, for granting an aid to her Majesty, by a land-tax*: And afterwards to make a most gracious speech to both

† These proceedings were published by order of the two Houses of Parliament, and shew the reasons both houses went upon: Which, with the precedents out of the journals of the House of Lords and House of Commons, will render them useful to posterity.

houses,

houses, of which we had desired and obtained a copy, which he read to the house, and is as follows, viz.

*My Lords and Gentlemen,*

I Think it proper, upon this occasion, to acquaint you, that I have had unquestionable informations, of very ill practices and designs carried on in *Scotland* by emissaries from *France*, which might have proved extremely dangerous to the peace of these kingdoms; as you will see by the particulars, which shall be laid before you, as soon as the several examinations, relating to this matter, can be fully perfected, and made publick without prejudice; in the mean time, I make no doubt, but by this seasonable discovery, I shall be able to give such directions for our security, as will effectually prevent any ill consequences from these pernicious designs.

*Gentlemen of the House of Commons,*

I am very sensible of your great readiness and affection for the publick service, by presenting me so early in the sessions with a considerable part of your supplies: I depend intirely upon your continuing with the same zeal to dispatch the remainder of them: That so we may be prepared to give the speediest assistance to our Allies, and to defeat the malicious designs of our enemies; who cannot be more industrious to contrive the ruin of this kingdom, and of the protestant religion, then I shall always be vigilant and careful both of their present preservation, and for their future security.

*Resolved, Nemine contradicente,*

That an humble address be presented to her Majesty, returning the thanks of this house, for her most gracious speech from the throne, and for the communicating



communicating the discovery her Majesty hath made of the wicked designs against her government; with assurance, that this house will stand by, and support her Majesty, and her government, against all *Pre-tenders*, and all her enemies whatsoever.

*Ordered,*

That a Committee be appointed to draw up the said address; and a Committee was appointed accordingly.

*Ordered,*

That the said address be drawn upon the said resolution, and also upon the debate of the house.

*Sabbati 18 die Decembris, 1703.*

Mr. *Bromley* reported from the Committee, to whom it was referred to draw up an address to be presented to her Majesty, (according to the order of yesterday) that they had drawn up an address accordingly, which they had directed him to report to the house; which he read in his place, and afterwards delivered in at the table, where the same was read.

*Resolved, Nemine contradicente,*

That this house doth agree with the Committee in the said address.

*Resolved,*

That the said address be presented to her Majesty by the whole house.

*Ordered,*

That such members of this house as are of her Majesty's most honourable Privy-council, do humbly know her Majesty's pleasure, when she will be attended by this house.

*Ordered,*

*Ordered,*

That some members be appointed to search the Lords journals, as to their proceedings in relation to the examination of any persons, who are discovered to have a design against her Majesty's government.

And they were appointed accordingly.

*The humble Address of the House of Commons to the Queen.*

*Most gracious Sovereign,*

WE your Majesty's most dutiful and loyal subjects, the Commons, in Parliament assembled, do return your Majesty our most humble and hearty thanks, for your most gracious Speech from the throne.

We are truly sensible of your Majesty's great goodness, and of the confidence you repose in us, by communicating the discovery of the ill practices and designs that have been carried on in Scotland, by emissaries from France; whereby we have an opportunity to repeat our unanimous resolutions to stand by, and support your Majesty, and the succession in the protestant line, as limited by law, against all Pretenders, and all your Majesty's enemies whatsoever.

We want words to express to your Majesty, the detestation we have of any conspiracies and attempts, to disturb the peace and prosperity of your happy government; under which, we must think our security sufficiently provided for, since your Majesty has been pleased to give such directions, as may prevent all ill consequences from them.

It

‘ It is great satisfaction to us, to find, that the  
 ‘ supplies we have already given, are so acceptable  
 ‘ to your Majesty : We shall go on with the same  
 ‘ readiness and zeal to dispatch the remainder of  
 ‘ them, that we may enable your Majesty to give  
 ‘ the speedier assistance to your Allies, and to de-  
 ‘ feat the malicious designs of your enemies.

‘ Your faithful Commons can never have the  
 ‘ least distrust of your Majesty’s vigilance and care,  
 ‘ for the preservation of the protestant interest in  
 ‘ general, of the monarchy, and the church of  
 ‘ *England*, as by law established : And we humbly  
 ‘ beg leave to assure your Majesty, that we will  
 ‘ never be discouraged, but will continue incessant  
 ‘ in our endeavours, by all proper methods, to trans-  
 ‘ mit them securely settled to posterity.

*Lune 20 die Decembris, 1703.*

Mr. St. *John* reported, that the members ap-  
 pointed to search the Lords journals, as to their pro-  
 ceedings in relation to the examination of any per-  
 sons, who are discovered to have a design against  
 her Majesty’s government, had searched the Lords  
 journals accordingly ; and he read in his place what  
 they had found therein, and delivered the same in  
 at the table, where the same was again read.

A motion being made, and the question being pro-  
 posed, than an humble address be presented to her  
 Majesty, setting forth the great concern this house  
 hath for her Majesty’s royal prerogative, and the  
 resolution of this house to support the same ; and  
 that no persons accused for crimes, who are her Ma-  
 jesty’s prisoners, ought to be taken out of the cus-  
 tody of the crown, without her Majesty’s leave ;  
 and a debate arising in the house thereupon ;

And

And a motion being made, and the question being put, that the debate be adjourned.

It passed in the negative.

Then the main question being put;

*Resolved,*

That an humble address be presented to her Majesty, setting forth the great concern this house hath for her Majesty's royal prerogative, and the resolution of this house to support the same; and that no persons accused for crimes, who are her Majesty's prisoners, ought to be taken out of the custody of the crown, without her Majesty's leave.

*Ordered,*

That a Committee be appointed to draw up the said address;

And a Committee was appointed accordingly.

*Ordered,*

That it be an instruction to the said Committee, that they do draw up the said address, upon the said resolution, and upon the debate of the house.

*Martis 21 die Decembris, 1703.*

Mr. Speaker reported, that the house did yesterday attend her Majesty at St. James's, and presented to her their address; and that her Majesty was pleased to give a most gracious answer, as followeth.

*Gentlemen,*

I Am very well pleased with your assurances of dispatching the supplies, and with the other parts of this address, in which you express so much duty and readiness to support, and to trust me.

: You



‘ You may depend upon my willingness to join  
 ‘ my endeavours with you, in securing to posterity  
 ‘ the protestant succession in the monarchy, and  
 ‘ the church of *England*, as it is established by  
 ‘ law.’

Mr. *St. John* reported, from the Committee to whom it was referred to draw up an address upon the resolutions of yesterday, that they had drawn up an address accordingly, which they had directed him to report to the house; which he read in his place, and afterwards delivered in at the table, where the same was read, and (with an amendment) agreed unto by the house.

*Resolved,*

That the said address be presented to her Majesty by the whole house.

*Ordered,*

That such members of this house, as are of her Majesty's most honourable Privy-Council, do humbly know her Majesty's pleasure, when she will be attended by this house.

*Mercurii 22 die Decembris, 1703.*

Mr. Comptroller acquainted the house, that her Majesty having been humbly waited upon to know her pleasure, when she would be attended by this house; her Majesty has been pleased to appoint to-morrow at four o'clock in the afternoon, at *St. James's*.

*Jovis*

*Jovis 23 die Decembris, 1703.*

*The humble ADDRESS of the House of Commons  
to the Queen.*

*Most Gracious Sovereign,*

WE your Majesty's most dutiful and loyal subjects, the Commons of *England*, in Parliament assembled, beg leave humbly to lay before your Majesty the great and just concern we are under, to see any violation of your royal prerogative.

Your faithful Commons believe the administration of the government best secured, when it is left to your Majesty, with whom the law has entrusted it; and have so firm a dependance upon your Majesty's affection to your people, and your great wisdom, that they can never apprehend so little danger from any conspiracy, as when the examination thereof is under your Majesty's directions.

We are therefore surprized to find, that when several persons, suspected of treasonable practices against your Majesty, were taken into custody by your messengers, in order to be examined; the Lords, in violation of the known laws of the land, have wrested them out of your Majesty's hands, and without your Majesty's leave or knowledge, in a most extraordinary manner, taken the examination of them solely to themselves; whereby a due enquiry into the evil practices and designs against your Majesty's person and government, may, in a great measure, be obstructed.

Your loyal Commons, do therefore most earnestly desire your Majesty, to suffer no diminution of that prerogative, which, during your Majesty's reign, they are confident will always be exerted for the good of your people.

And

‘ And we humbly beg leave to assure your Majesty, that as we are resolved, by timely and effectual supplies, to enable your Majesty to carry on the war, which you have so gloriously begun; so we will, to the utmost of our power, support your Majesty in the exercise of your just prerogative at home, and the asserting of it against all invasions whatsoever.

*Lunæ 3 die Januarii, 1703.*

Mr. Speaker reported, that he, with the house, did before the recess, present to her Majesty their humble address of the twenty third of *December* last; and that her Majesty was pleased thereupon to give this most gracious answer.

*Gentlemen,*

‘ I Have had the satisfaction to find, that the matter which may have occasioned this address, is now at an end.

‘ I return you many thanks for the concern you express for my prerogative; and for your repeated assurances of making the supplies effectual, which will be greatly for the honour and advantage of the kingdom.

‘ I shall be careful not to give way to any invasion of the prerogative of the crown, or of the rights and liberties of the people.’

Upon this address of the House of Commons, the House of Lords drew up the following representation.

*The representation of the Lords to the Queen.*

*May it please your most excellent Majesty,*

‘ **W**E your Majesty’s most dutiful and loyal subjects, the Lords spiritual and temporal in Parliament assembled, find our selves under an unhappy necessity of making this our humble application

' cation to the throne, upon occasion of an address  
' presented to your Majesty by the House of Com-  
' mons, the 23d day of *December* last, and since that  
' time published to the whole nation in print; by  
' which the House of Lords is charged with the vio-  
' lation of your royal prerogative, and of the known  
' laws of the land; with wresting persons sus-  
' pected of treasonable practices, and taken into  
' custody by messengers, out of your Majesty's hands  
' without your leave or knowledge, and in a most  
' extraordinary manner taking the examination of  
' them solely to themselves; whereby a due enquiry;  
' into the evil practices and designs against your  
' Majesty's person and government, might in great  
' measure be obstructed. And they conclude their ad-  
' dress, by most earnestly desiring your Majesty to suf-  
' fer no diminution of your prerogative, and promise  
' to support you in the asserting it against all inva-  
' sions whatsoever. It is not possible for us to remain  
' silent under this heavy charge, so unjustly, and  
' without the least ground or colour, endeavoured to  
' be fixed upon the whole body of the Peers, which  
' tending directly to create an ill opinion of us in  
' your Majesty, puts us under an inevitable necessity,  
' of vindicating both the legality and dutiful man-  
' ner of our proceeding.

' The expressions in the address of the House of  
' Commons are so very harsh and undecent, that we  
' may truly affirm the like were never used of the  
' House of Peers, in any age, not even by that assem-  
' bly, which, under the name of the House of Com-  
' mons, took upon them not only to abolish the House  
' of Lords, but to destroy the monarchy. We shall  
' carefully avoid making returns of that kind: We  
' consider too much what we owe to our selves; and  
' we know too well the profound respect due to your  
' royal person, to let any provocation transport us  
' so, as to use words unfit to be offered by us to our  
' Sovereign.

' The



‘ The matter of this address is no less injurious to  
‘ us than the terms. There was not the least occa-  
‘ sion for a just objection, to any part of our conduct  
‘ in that business to which the address relates ; the  
‘ proceeding was strictly justifiable by the known laws  
‘ and customs of Parliament, it was carried on with  
‘ the utmost respect to your Majesty, and with true  
‘ zeal for the safety of your person and government ;  
‘ all that was done was agreed to by the concurrent  
‘ opinion of the house, without the least objection  
‘ from any of our members, who have the honour  
‘ of serving your Majesty in your great offices and  
‘ employments.

‘ We humbly represent to your Majesty, that, by  
‘ the known laws and custom of Parliaments, the  
‘ House of Peers has an undoubted right, in cases  
‘ where they conceive it to be for the good and safety  
‘ of your Majesty, and the kingdom, to take exami-  
‘ nations of persons charged with criminal matters,  
‘ whether such persons be then in custody or not, and  
‘ also to order the persons so to be examined, to be  
‘ taken into custody of your Majesty’s sworn Officers  
‘ attending the house, during such examination, or  
‘ to commit them to any other safe custody that they  
‘ shall think proper ; and to restrain others, if they see  
‘ cause, from having access to, or communication  
‘ with them : The House of Lords has exercised this  
‘ right from time to time, as occasions have required,  
‘ without objection. Our records are filled with  
‘ precedents which warrant our claim in every part  
‘ of it, and we presume to affirm to your Majesty,  
‘ that the drawing this right into question at any  
‘ time, cannot but be of dangerous consequence to  
‘ the liberties and safety of the people, and to the  
‘ constitution of the government, as tending to avoid,  
‘ or render in great measure ineffectual the enquiries  
‘ of Parliaments, which are so absolutely necessary,  
‘ especially where many and great persons are engag-  
‘ ed in dangerous designs against the government ; or  
‘ where

‘ where ill Ministers abuse their favour towards the  
 ‘ oppressing or enslaving of the people. Your Ma-  
 ‘ jesty’s wisdom and goodness make us secure at pre-  
 ‘ sent against all influences of that kind, and we una-  
 ‘ nimously and heartily pray we may long enjoy the  
 ‘ blessing of your reign. But if it happens in future  
 ‘ times, that ill men should gain too great a degree  
 ‘ of favour with our Princes; how easily will it be  
 ‘ for them to stifle or defeat all parliamentary en-  
 ‘ quiries into their crimes? For if the being in prison,  
 ‘ or in the hands of a messenger, will protect men  
 ‘ from being examined in the house of Lords, or from  
 ‘ being put into the custody of the proper Officers of  
 ‘ the house, during the examination, and debarred  
 ‘ from conversing with others; it will certainly be al-  
 ‘ ways in the power of favourites to cause those who  
 ‘ can be witnesses against them, as well as the ac-  
 ‘ complices of their designs, to be taken into cu-  
 ‘ stody. And if persons in custody are out of the reach  
 ‘ of the House of Lords, who are the hereditary  
 ‘ counsellors of the crown, and in whom a judicial  
 ‘ power is lodged by the constitution, it is not to be  
 ‘ imagined that the Commons can pretend to a  
 ‘ greater power of examining, committing, or re-  
 ‘ straining them.

‘ No House of Commons till now has given coun-  
 ‘ tenance to this dangerous opinion, which does so  
 ‘ directly tend to the rendring ill Ministers safe  
 ‘ from the examination of Parliaments: And we are  
 ‘ persuaded no House of Commons hereafter will as-  
 ‘ sert such a notion, because they are not wont easily  
 ‘ to part with a power they have assumed; and it  
 ‘ is certain, that they have several times taken upon  
 ‘ them to exercise an authority, like that which they  
 ‘ have so severely reflected on in their address.

‘ This consideration gave us the greater astonish-  
 ‘ ment, to find our proceeding, represented in the  
 ‘ strange terms of wresting prisoners out of your  
 ‘ Majesty’s hands, and taking the examination of

' them solely to our selves. We believe the ordering  
 ' persons to be examined in that high court, where  
 ' your Majesty is always present in consideration of  
 ' law, and in that great council where you may be  
 ' present in your royal person, as often as you please,  
 ' will never be thought an exclusion of your Ma-  
 ' jesty from the examinations, if that was intended to  
 ' be insinuated by saying, we had taken the examina-  
 ' tions solely to our selves. Having thus laid before  
 ' your Majesty what it is we claim, and must insist  
 ' on, as the indisputable right of the House of Peers;  
 ' which was never thought, in the time of your royal  
 ' ancestors, to be prejudicial to the just prerogatives  
 ' of the crown, and which is manifestly necessary for  
 ' the securing the liberties of your people, whereof  
 ' we are assured your Majesty will have an equal  
 ' care: We humbly beg leave to lay before you a  
 ' short state of the particular matter of fact relating to  
 ' these prisoners, not doubting, but when the whole  
 ' proceeding is known to your Majesty, it will be ap-  
 ' proved not only as lawful, but every way respect-  
 ' ful to your Majesty.

' On *Tuesday* the 14th of *December*, the House of  
 ' Lords was informed, that several persons had been  
 ' seized by the custom-house Officers on the coast of  
 ' *Sussex*, as they came from *France*, and that amongst  
 ' them there was one *Boucher*, who was capable of  
 ' making considerable discoveries, having been in  
 ' arms in the *French* service for many years, and  
 ' Gentleman of the horse, and *Aid de Camp* to the late  
 ' Duke of *Berwick*, who stands attainted of high trea-  
 ' son, and who had been secretly in *England* several  
 ' times before; that it was probable, if he was strict-  
 ' ly examined, he might be brought to confess, since  
 ' he saw his life in apparent danger; but that he was  
 ' a bold man, and likely to attempt an escape on  
 ' that very account, if he was not carefully looked  
 ' after; and the house was also told, that there was a  
 ' general remissness both in the taking, searching, and  
 ' looking

‘ looking to such prisoners, which did afterwards appear very evidently in the examinations that were taken. Upon this information the Earl of *Nottingham*, your Majesty’s principal Secretary of State, acquainted the house, that he had not heard of *Boucher*’s name particularly, but had sent messengers to bring one *Ogilby*, and the other prisoners who had been apprehended by the custom-house Officers, to town, and that he believed the messengers would do their duty, *but he would not be answerable for them.*

‘ After this account of the prisoners, and of what had been done in order to secure them, the house thought themselves obliged in duty to your Majesty, and for the publick safety, at a time when the kingdom is engaged in an open war with *France*, and that there are too just grounds to apprehend the dangerous practices of *French* emissaries, to make an humble address to your Majesty, that particular care might be taken for securing the person of *Boucher*, and of those who were taken with him, and that none might be suffered to speak with them till they were examined.

‘ The next day your Majesty’s gracious answer to this address was reported to the house, that care had been taken to secure the prisoners, and that your Majesty would give orders that no body should speak with them till they were examined. Thereupon the Lords entred into a farther consideration of the importance of this matter, and conceiving nothing to be more likely to bring prisoners, who had forfeited their lives, to a full discovery of the truth, than to find themselves under the enquiry of a Parliament, they thought it would be of publick service, for them to take examinations of these persons; and accordingly an order was made, that no persons should speak with the prisoners, till they had appeared at the bar of the house.



‘ On the 16th day, the Earl of *Nottingham* informing the House of Lords, that the prisoners were brought to town; the Usher of the black-rod was ordered to take them into his custody, in order to their examination, and to keep them separate, and in close custody, (as your Majesty had before directed) and it being thought most proper, from the nature of the thing, that the examination should be by a Committee of Lords, rather than by the whole house, it was resolved accordingly.

‘ We beg leave to mention to your Majesty a matter of fact which satisfied the Lords, that their resolution to take the examinations of *Boucher*, and the persons apprehended with him, was neither unknown nor disagreeable to your Majesty; On the same day when that was ordered, being the 15th of *December*, the Lords resolved to examine Sir *John Maclean*, a very dangerous person, as was represented to the house, who then stood committed in the hands of a messenger; and for that purpose ordered him to be brought to the house the next day, having, as they then thought, very good grounds to believe it might prove of great service to your Majesty. Sir *John Maclean* was brought to the house according to the order, but your Majesty being pleased so far to take notice of this order, as to signify to the House by the Lord Steward, that Sir *John Maclean* had been in part examined already, and that your Majesty thought it not proper, to have that business taken out of the way of examination it was then in, but that your Majesty would in a short time communicate it to the house; the Lords immediately acquiesced in your Majesty’s opinion, and sent back Sir *John Maclean* to the place from whence he was brought. It was with this disposition of mind the Lords acted in the whole matter, and if your Majesty, who no doubt had the same notice of both orders, had thought any other method of the examination of *Boucher*, and the persons taken  
‘ with

‘ with him, more proper than of the Lords; they had  
‘ reason to conclude your Majesty would have inti-  
‘ mated it at the same time, and most certainly, the  
‘ house would have had a like deference for your  
‘ royal judgment in that instance also.

‘ The Lords Committees appointed to examine the  
‘ prisoners proceeded with all possible dispatch, and  
‘ made their report to the house on the 21<sup>st</sup> of *Decem-*  
‘ *ber*. Upon consideration of the report, the house  
‘ found it requisite to commit *Boucher* to the prison  
‘ of *Newgate* for high-treason, and the Lords Com-  
‘ mittees having submitted to the judgment of the  
‘ house, whether several parts of the examinations  
‘ referred to in their report, should be laid open to  
‘ the house, or put into any other way of being far-  
‘ ther enquired into, or prosecuted; the house, out  
‘ of a full assurance they had, that when the matter  
‘ of fact should be laid before your Majesty, you  
‘ would certainly give such orders thereupon as were  
‘ every way suitable to your royal prudence, and  
‘ tender care of the publick safety, did unanimously  
‘ resolve, without so much as suffering those parts of  
‘ the report to be laid open to the house, that an  
‘ humble address should be made from the house to  
‘ your Majesty, by the Lord Steward, and the Duke  
‘ of *Somerſet*, (two of the Lords Committees to whom  
‘ the examination had been referred) laying before  
‘ your Majesty the whole report, with all matters re-  
‘ lating thereto, and humbly desiring your Majesty  
‘ to give order, that *Boucher* should be prosecuted by  
‘ Mr. *Attorney-General* for high-treason, and that as  
‘ to the commitment, prosecution or discharge of the  
‘ other prisoners mentioned in the report, you would  
‘ be pleased to give such directions as should seem  
‘ most proper to your royal wisdom. Thus, that as the  
‘ whole affair was entred upon out of zeal for your  
‘ Majesty’s preservation, and the safety of the king-  
‘ dom, and was carried on and concluded with all pos-  
‘ sible respect to you; so we had the comfort to

‘ rest assured, that our behaviour was no less gra-  
 ‘ ciously accepted by your Majesty, from the answer  
 ‘ you were pleased to make the same day, to our last  
 ‘ address on this subject, and which was reported to  
 ‘ us on the 22d of *December* by the Duke of *Somerset*,  
 ‘ whereby your Majesty was pleased to signify to the  
 ‘ house, with your accustomed goodness, that you  
 ‘ would give order for every thing as the Lords had  
 ‘ desired.

‘ Madam, this is a true and just account of our  
 ‘ proceedings, which have been so strangely misre-  
 ‘ presented, and to which no exception can possibly be  
 ‘ taken by any persons rightly informed. For as we  
 ‘ had your royal approbation of all that was done;  
 ‘ so the House of Commons could have had no pretence  
 ‘ of objection, if they had taken the usual Parliamen-  
 ‘ tary methods of desiring to be informed of what we  
 ‘ had done, and of the grounds of our proceedings,  
 ‘ before they had approached your Majesty with such  
 ‘ a representation of them.

‘ Their carrying this unprecedented address to  
 ‘ your Majesty, in so hasty a manner, gives us almost  
 ‘ as great trouble as the hard usage we find in it.

‘ The ancient, known, and indeed only effectual  
 ‘ method, of preserving a good correspondence be-  
 ‘ tween the two Houses of Parliament, has been by  
 ‘ conferences. If at any time either house conceived  
 ‘ they had a reasonable ground to object against the  
 ‘ proceedings of the other, conferences have been de-  
 ‘ fired, and the matter in debate between them fairly  
 ‘ discussed, and thereby mistakes have been declared  
 ‘ for the most part, and a good understanding culti-  
 ‘ vated, and a mutual respect preserved, which is al-  
 ‘ ways highly requisite in the nature of our consti-  
 ‘ tution, but more especially necessary in this time of  
 ‘ war and danger.

‘ Had the House of Commons thought fit to have  
 ‘ pursued this method upon this occasion, we should  
 ‘ have been able to have given them entire satisfac-  
 ‘ tion,

tion, not only of the lawfulness of all we had done,  
but of the just and weighty ground upon which  
we took the examinations of these persons into our  
own hands: or at least, if they could have con-  
vinced us of any mistake, we should have given  
them any reasonable satisfaction.

But without making any such previous step, the  
House of Commons have made an appeal directly  
to the throne, against the House of Lords, and  
charged them, tho' most unjustly, with attempts  
of the highest nature. Nothing like this was ever  
done before, and out of our hearty concern for the  
preservation of our happy constitution, we hope  
the same thing will never be done again. We know  
your royal heart is unmoveably fixed on the preserv-  
ing the liberties of your people, and transmitting  
them entire to posterity; but if, in after times, the  
Houses of Parliament should be appealing against  
one another to the crown, (for if such a course  
be justifiable in the House of Commons, the same me-  
thod may be taken by the Lords) as your Majesty is  
now sensible how great difficulties it necessarily  
brings upon a good Prince; so it is easy to foresee  
(and we cannot think of it without terror) how  
fatal the consequences may be in the reign of an  
ill-designing Prince, and what advantages may be  
taken from it, for utterly subverting the best order-  
ed form of government in the world. There are  
examples abroad, where proceedings of this kind  
have ended in the overthrow of the liberties of the  
people, which makes us the more apprehend the  
beginning of them among our selves. Your Ma-  
jesty's great judgment cannot but readily discern,  
whether it does naturally tend, for one House of Par-  
liament to be exciting, and earnestly desiring the  
Sovereign, to exert a real or supposed prerogative  
against the other house. It is not easy to imagine  
what the Commons could expect of your Majesty  
from such an application: The Lords have never



‘ entertained a thought of using this dangerous method, whatever occasions may have been given within the compass of late years; and we promise your Majesty, we will always endeavour to preserve a good understanding with the house of Commons, and shall never think it too dear to procure that union at any rate, unless that of delivering up those rights and powers which are lodged in us by the law, and without which the constitution cannot subsist.

‘ We shall never be guilty of the presumption of prescribing to your Majesty, when or against whom you should exert your prerogative, but we will be always ready to assist you in the support of all the just rights of the crown, as well as in the maintaining the liberties of the subject, which we know are no less dear to your Majesty.

‘ It may with modesty and truth be affirmed, that the Lords have, in all times, been the surest and most natural bulwark of the prerogatives of the crown, they being (as your royal grandfather, of ever blessed memory, was pleased to express it) an excellent screen and bank between the Prince and the people, to assist each against any encroachment of the other.

‘ We will never contribute by any act of ours to the diminution of the rights of the crown, nor, as far as we are able, will suffer it in others. We cannot act otherwise without hurting ourselves in the highest degree, being thoroughly convinced that the preservation of the legal prerogative, is not only the surest way to secure our own privileges, but of absolute necessity for the happy and rightful administration of the government. And we hope the House of Commons will, in all times to come, speak and act with that regard to the prerogative which they seem to have taken up lately.

‘ There

‘ There remains one particular more which we will  
‘ only name to your Majesty, because we rest satisf-  
‘ fied it cannot have weight any where, that is the  
‘ insinuation in the address, as if the examination of  
‘ these prisoners by the Lords, was in order to obstruct  
‘ the enquiry into the designs against your Majesty’s  
‘ person and government ; or at least that it was like-  
‘ ly to produce such an effect. Our dutiful zeal for  
‘ your Majesty’s government, and our warm concern  
‘ to discover all designs and oppose all practices  
‘ against it, are too well known to the world, that any  
‘ suggestions of that sort should make the least im-  
‘ pression to our disadvantage ; and we are very sure,  
‘ it was no suspicion of that nature which gave the true  
‘ rise to this very sharp address. It is easy to deter-  
‘ mine, whether a hearty and forward undertaking to  
‘ search into the designs of your enemies, or the seek-  
‘ ing occasions to object to, and interrupt such en-  
‘ deavours, be most likely to obstruct the discovery  
‘ of the pernicious practices of traytors.

*Most Gracious Sovereign,*

‘ We most humbly ask pardon for presuming  
‘ to give your Majesty the trouble of this long re-  
‘ presentation, which has proceeded from the pas-  
‘ sionate concern we have to stand not only acquit-  
‘ ted, but entirely approved in the judgment of so  
‘ excellent a Queen, and so justly beloved of all her  
‘ subjects.

‘ We depend upon your justice as well as your  
‘ goodness, that nothing can do us prejudice, (from  
‘ whatsoever hands it comes) in your royal opinion,  
‘ while we continue to act in that station where  
‘ we are placed by the form of the *English* govern-  
‘ ment, according to the laws and customs of Parlia-  
‘ ment, with all imaginable respect and duty to your  
‘ self, and all possible zeal for the safety and happi-  
‘ ness of your kingdom.

‘ Give

‘ Give us leave to conclude this our humble address with this firm promise, that no danger, no reproaches, nor any artifices whatsoever, shall deter or divert us from using our utmost endeavours, from time to time, in discovering and opposing all contrivances and attempts against your royal person and government, and the protestant succession as by law established.

Her Majesty’s gracious answer to this representation was,

My Lords,

*I Am very sorry for any misunderstandings that happen between the two Houses of Parliament, which are so inconvenient for the publick service, and so uneasy to me, that I cannot but take notice, with satisfaction, of the assurances you give me, that you will carefully avoid all occasions of them.*

*I thank you for the concern you express for the rights of the Crown, and for my prerogative ; which I shall never exert so willingly as for the good of my subjects, and the protection of their liberties.*

*Sabbati 22 die Januarii, 1703.*

The Commons ordered, that some of their members be appointed to search the journals of the House of Lords, touching their proceedings upon the late address of this house to her Majesty, and their representation thereupon ; and also to search precedents concerning commitments by the House of Lords, in cases where the person has been in the custody of the crown, and report the same to the house ; and several members were appointed accordingly.

*Sabbati*

*Sabbati 29 die Januarii, 1703.*

Mr. *Toke* reported, that the members appointed to search the journals of the House of Lords, touching their proceedings upon the late address of this house to her Majesty, and the representation thereupon; and also to search precedents concerning commitments by the House of Lords, in cases where persons have been in the custody of the crown, had searched the same accordingly; and he read in his place, what they found therein, and afterwards delivered the same in at the table.

*Resolved,*

That this house will, upon *Tuesday* morning next, take the said report into consideration.

*Martis 1 die Februarii, 1703.*

*Resolved,*

That this house will, upon *Thursday* morning next, take into consideration the report of the journal of the House of Lords, with relation to the address of this house to her Majesty, and the Lords representation.

*Jovis 3 die Februarii, 1703.*

The report of the journal of the House of Lords, relating to the address of this house, and the representation of the House of Lords was read.

*Resolved,*

That an humble address be presented to her Majesty, to clear this house from the misrepresentation of the House of Lords, in their representation presented to her Majesty.

*Ordered,*



*Ordered,*

That a Committee be appointed to draw up the said address.

And a Committee was appointed accordingly.

*Veneris 18 die Februarii, 1703.*

Mr. *Granville* reported, from the Committee appointed to draw up an humble address to be presented to her Majesty, to clear this house from the misrepresentation of the House of Lords, in their representation, presented to her Majesty, that they had drawn up an address accordingly, which they had directed him to report to the house; which he read in his place, and afterwards delivered in at the table, where the same was read, and (with an amendment) agreed unto by the house.

*Resolved,*

That the said address be presented to her Majesty by the whole house.

*Ordered,*

That such members of this house as are of her Majesty's most honourable Privy-council, do humbly know her Majesty's pleasure, when she will be attended by this house.

*Lunæ 21 die Februarii, 1703.*

Mr. Secretary *Hedges* acquainted the house, that her Majesty having been, (according to order) waited upon, to know when she would be attended by this house, her Majesty has been pleased to appoint this afternoon, at four of the clock, at St. James's,

*The*

*The Commons address to the Queen.**Most gracious Sovereign,*

‘**Y**OUR Majesty having, with great goodness,  
‘declared from the Throne to your Parliament,  
‘that divers ill practices and designs had been car-  
‘ried on in *Scotland*, by emissaries from *France*, which  
‘might have proved extreamly dangerous to the  
‘peace of these kingdoms; and that you would  
‘lay the particulars before your Parliament, as soon  
‘as the several examinations could be fully perfect-  
‘ed, and made publick without prejudice; We,  
‘your Majesty’s most dutiful and loyal Commons,  
‘resting secure and satisfied in your Majesty’s  
‘great wisdom and care, most thankfully acknow-  
‘ledged the confidence you have been pleased to re-  
‘pose in us.

‘But finding upon the Lords journals, That  
‘their Lordships the very same day made two or-  
‘ders, one to remove your Majesty’s prisoners out  
‘of your custody into their own, and the other to  
‘commit their examination solely to a Committee  
‘of seven Lords, chosen and appointed by them-  
‘selves; by which your Majesty seemed excluded  
‘from any power over the said prisoners.

‘Your loyal Commons, justly sensible of the dan-  
‘gerous consequences of such proceedings, thought  
‘themselves obliged to declare their concern at this  
‘violation of your royal prerogative, and the  
‘known laws of the land, in an humble address  
‘presented to your Majesty.

‘Your faithful Commons are well assured, when  
‘this matter comes to be rightly stated and under-  
‘stood, a zeal so well intended, and so well ground-  
‘ed, will rather be imputed to them as meritorious,  
‘than liable to exception; and therefore since their  
‘humble address has been so artfully misrepresented  
‘by

‘ by the Lords in their late Representation, present-  
 ‘ ed to your Majesty on *Tuesday*, the 18th of *Janua-*  
 ‘ *ry*, and published and spread with unusual industry  
 ‘ through all parts of the kingdom, they look upon  
 ‘ themselves under an indispensible necessity of ap-  
 ‘ pearing before your Majesty in their own justifica-  
 ‘ tion.

‘ Their Lordships think fit to take offence at the  
 ‘ manner and words of our address, and accompa-  
 ‘ ny this exception with reflections and insinuations,  
 ‘ more harsh and more odious than the most oppro-  
 ‘ brious language : But as we made use of no terms,  
 ‘ but what were suitable to the occasion, so it will ap-  
 ‘ pear by precedents, that the same have been fre-  
 ‘ quently and reciprocally used by both houses to  
 ‘ each other ; nor could the Commons, in respect to  
 ‘ your Majesty, assert your royal prerogative, in  
 ‘ words of less force than those in which they have  
 ‘ vindicated their own privileges.

‘ Whatever expressions our zeal for your Majesty,  
 ‘ and the publick, might have inspired, we could  
 ‘ never have offered to our Sovereign so ungrateful  
 ‘ a remembrance as the destruction of the monarchy,  
 ‘ by a detestable assembly, composed of members of  
 ‘ both houses, who being alike partakers in the  
 ‘ guilt, ought equally to share the reproach.

‘ With much more reason might we observe, both  
 ‘ on behalf of your Majesty and the Commons,  
 ‘ that their Lordships, not contented with prefer-  
 ‘ ring their own examinations to yours, not content-  
 ‘ ed with excluding your Majesty and the Com-  
 ‘ mons, to whom Parliamentary Enquiries most pro-  
 ‘ perly belong, to appropriate to their house only, even  
 ‘ in their application to their Sovereign, the name  
 ‘ of a Parliament ; an instance not to be paralleled,  
 ‘ unless by that very assembly that subverted the  
 ‘ monarchy.

‘ It is not the question at present, as stated by the  
 ‘ Lords, whether their Lordships have a power of  
 ‘ taking

‘ taking into custody, while under examinations,  
 ‘ persons accused of criminal matters, cognizable in  
 ‘ Parliament? But, that their Lordships have a right  
 ‘ to take the prisoners of the Crown, and the exa-  
 ‘ mination of them, solely into their own hands,  
 ‘ without your Majesty’s consent, and in such a  
 ‘ manner as must necessarily prove an exclusion to  
 ‘ your Majesty, and this house, is the proposition  
 ‘ your Commons deny, and for which their Lord-  
 ‘ ships have produced no precedent.

‘ This unhappy occasion has been, at the same  
 ‘ time, accompanied with the most surprizing in-  
 ‘ stances of Contradiction, and counter-orders to  
 ‘ your Majesty, both preceding and subsequent to  
 ‘ it, but especially on the 29th of *January* last,  
 ‘ when your Majesty with your accustomed good-  
 ‘ ness, communicated to the Lords the papers rela-  
 ‘ ting to the *Scotch* conspiracy, with an exception  
 ‘ only of some matters not yet proper to be made  
 ‘ publick, without preventing a further discovery of  
 ‘ secrets of greater importance, with which your Ma-  
 ‘ jesty assured their Lordships they should also be ac-  
 ‘ quainted, as soon as it could be done without preju-  
 ‘ dice. However their Lordships, upon what provo-  
 ‘ cation, or for what reason, no where appears, im-  
 ‘ mediately addressed your Majesty, pressing you  
 ‘ to lay before them the whole matter, with all papers  
 ‘ relating thereunto; by which your Majesty was put  
 ‘ under a necessity, either to give their Lordships a  
 ‘ refusal, or to comply with their unexpected impor-  
 ‘ tunity, to the endangering the publick service.  
 ‘ These proceedings, so extraordinary in their nature  
 ‘ and in their manner, could not but sensibly affect  
 ‘ your faithful Commons, whose earnest desire it is,  
 ‘ to see both your Houses of Parliament, and the  
 ‘ whole body of your people, entirely agreed to pay  
 ‘ the deference due to your Majesty’s wisdom, to  
 ‘ confide in your care, and to promote and maintain  
 ‘ your honour and dignity.

‘ Their



' Their Lordships, not satisfied with assuming  
 ' this unprecedented power, have endeavoured, with  
 ' a great deal of art, to persuade your Majesty of the  
 ' necessity of it, to prevent the designs of ill Princes  
 ' and their favourites: But as it may seem unreason-  
 ' able for their Lordships to begin to practise upon a  
 ' good Prince, such methods as are pretended only to  
 ' be needful against an ill one, so it is our humble o-  
 ' pinion, that the dangers might be much greater,  
 ' admitting this precedent, should the Lords com-  
 ' bine to defend one another from enquiries and pro-  
 ' secutions, all Parliamentary impeachments might  
 ' be eluded, secret designs carried on, the innocent  
 ' aspersed without reparation, and the guilty acquit-  
 ' ed without trial. Nor is that instance mentioned  
 ' by the Lords an unreasonable caution, since that  
 ' revolution in a neighbouring kingdom, alluded to  
 ' by their Lordships, was occasioned by the incroach-  
 ' ments of a prevailing cabal of Lords, who endea-  
 ' vouring to enslave the people, and to betray their  
 ' King and their country to a foreign power, obliged  
 ' the Church and the Commons to unite in the pub-  
 ' lick defence.

' Your faithful Commons have found themselves  
 ' so happy under your Majesty's administration, that  
 ' they please themselves with more agreeable pro-  
 ' spects, and renouncing such examples of unseason-  
 ' able jealousies and fears, most thankfully receive  
 ' the blessing of your reign: Nor could they have  
 ' made a more grateful return for your Majesty's ge-  
 ' nerous protection to their liberties, than by a suit-  
 ' able concern for your prerogative.

' If their Lordships had consulted their own jour-  
 ' nals, with the same care that we always take to be  
 ' rightly informed, they would hardly have affirmed,  
 ' that a direct appeal to the throne, without any  
 ' previous desire of conference, had been an unpre-  
 ' cedented practice. Their books are filled with va-  
 ' riety

riety of instances to the contrary; but without examining their books, it seems very surprizing, that their Lordships could so soon forget their address presented to your Majesty the last session on behalf of the Lord Bishop of *Worcester*, and their address to the late King on behalf of *William* Earl of *Portland*, *Edward* Earl of *Orford*, *John* Lord *Somers*; and *Charles* Lord *Halifax*, impeached by the Commons of high crimes and misdemeanors; and when this house formerly expostulated with the House of Lords, for proceedings in the very same method of which they now complain, their Lordships made a most solemn declaration in these words;

*That they must ever assert a liberty in their house to apply to the Throne by themselves, for the doing any thing warranted by law, &c.*

Nor can the Lords, we presume, upon second reflection, deny the Commons the same liberty, which their Lordships themselves have so strongly asserted, and so frequently practised.

Your loyal Commons sincerely concur with their Lordships in declaring, that we will never contribute by any act of ours to the diminution of the rights of the Crown, and that we will not suffer it in others: Your Majesty, their Lordships, and the whole world, may, judge from the example we have now given, if their Lordships do truly wish the House of Commons may, in all times to come, speak and act with that regard to the prerogative, which they allow us the honour to have now taken up; we shall be very unfortunate to continue under their displeasure, at the same time when they seem to hope, that those who succeed us will take pattern by us.

We wish their Lordships also on their part may continue in all times to come, to speak with that

' regard to parliamentary impeachments, which  
 ' they seem so lately to have taken up, since we have  
 ' reason to apprehend, that the misunderstandings  
 ' which have of late years arisen between the two  
 ' houses, have been principally owing to the arti-  
 ' fices of some particular persons among themselves,  
 ' whom the Commons thought it their duty, for the  
 ' publick safety, to bring to justice. How much  
 ' more difficult will all such endeavours be rendred,  
 ' should their Lordships be once admitted sole Exa-  
 ' miners of accusations against each other, as they  
 ' are already sole Judges.

' We are accused, but most unjustly, of exciting  
 ' and earnestly desiring your Majesty to exert your  
 ' prerogative against the House of Lords: We appeal  
 ' to the words of our address, if it is possible natu-  
 ' rally to impose any such sense upon any expression  
 ' that is there: We are sorry their Lordships should  
 ' descend so low as to the straining and wresting of  
 ' words, by which they rather discover an unfortu-  
 ' nate inclination, to make us seem culpable upon any  
 ' terms, than that they in truth believe us so: We  
 ' know how vain and how fruitless an application it  
 ' would be to excite your Majesty to any abuse of  
 ' your power, which we are convinced you will al-  
 ' ways exercise for the general good; and so far  
 ' are your Commons from entertaining any such  
 ' desire, that we heartily wish to see a good cor-  
 ' respondence preserved between the two houses;  
 ' not would forbear to purchase it at any rate, ex-  
 ' cept giving up the rights of your Majesty, by  
 ' whom we are protected, and the liberties and  
 ' properties of the People, by whom we are en-  
 ' trusted.

' These few instances, so plain and so uncontest-  
 ' able, we presume will be sufficient, without trespas-  
 ' sing much longer upon your Majesty's time, to  
 ' discredit whatever else has been alledged, to create

in

' in your Majesty, and those we represent, an ill opi-  
 ' nion of us: We have been careful and industrious  
 ' to avoid, as far as was consistent with our necessa-  
 ' ry justification, all occasion of reviving animosities,  
 ' and how great soever the provocation has been,  
 ' your Majesty having declared how uneasy you  
 ' are under such misunderstandings, we shall make  
 ' no difficulty to lay aside our resentments, who  
 ' shall always be ready to sacrifice our lives and for-  
 ' tunes to your quiet and service: Nor can we  
 ' doubt but we must stand fully acquitted to the  
 ' whole world, and especially to your Majesty,  
 ' since the zeal that we have shewn, and the re-  
 ' proaches that we have born, have been owing to  
 ' no other cause but the defence of an excellent  
 ' Queen, in whose hands God Almighty has placed  
 ' the executive authority over these nations; which  
 ' authority it has been the only endeavour of your  
 ' faithful Commons to preserve as entire as our laws  
 ' and constitution allow.

*May it please your Majesty,*

' It is with the deepest concern, and a grief not to  
 ' be expressed, that your dutiful and loyal Commons  
 ' have found themselves engaged in disputes of this  
 ' nature, by which they have been so unseasonably  
 ' interrupted in finishing the supplies, and other  
 ' matters of the highest importance: How zealously  
 ' they have applied themselves to the discharge of  
 ' their duty, appears from their having already pre-  
 ' sented your Majesty with the greatest part of their  
 ' aids, with a dispatch and unanimity beyond ex-  
 ' ample: Nor could the few bills yet depending have  
 ' met the least objection or delay, but from the in-  
 ' dispensible necessity of vindicating your Majesty's  
 ' royal prerogative, the privileges of our own house,  
 ' and the rights and liberties of all the Commons of  
 ' England, in several instances invaded almost at the



‘ same time ; we wish there may have been more of  
 ‘ mistake than design in those who have created  
 ‘ those unhappy differences : However, we desire  
 ‘ the remembrance may be henceforth blotted out,  
 ‘ and that there may remain no other impressiion in  
 ‘ the hearts both of Lords and Commons, than a sin-  
 ‘ cere and passionate concern for your Majesty’s  
 ‘ welfare and glory : Nor any other contention  
 ‘ hereafter arise, but by whom the publick good  
 ‘ shall be best advanced, the protestant succession,  
 ‘ and the church of *England* best secured, and the  
 ‘ just rights and prerogatives of the crown best  
 ‘ supported.

The Queen’s answer to the Commons address was  
 to this effect :

Gentlemen,

Queen’s  
 Answer.

*I Return you many thanks for the great concern which  
 you express for me and my just rights. Your dispatch  
 of the supplies is a great advantage to the publick ser-  
 vice. And I am very well pleased with the assurances  
 you give me of your care to avoid any occasion of dis-  
 sence between the houses, especially at this time, when  
 there is so apparent a necessity of strengthening our selves  
 against the malicious designs of our enemies.*

*Jovis 24 die Februarii, 1703.*

Ordered,

That some members be appointed to search the  
 journals of the House of Lords, what proceedings  
 have been since the last report to this house, upon  
 the papers communicated to the Lords by her Ma-  
 jesty, relating to the conspiracy ; and several mem-  
 bers were appointed accordingly.

*Luna*

*Lune 28 die Februarii, 1703.*

Sir *Humphry Mackworth* reported, that the members appointed had been to inspect the journals of the House of Lords, what proceedings had been since the last report to this house, upon the papers communicated to the Lords by her Majesty, relating to the conspiracy; but that they did not find any proceedings as yet entered in their journals: But that out of the papers for making up the same, they had taken copies of the proceedings they found therein, which he read in his place, and afterwards delivered in at the table, where the same were read.

*Ordered,*

That the consideration of the said report be referred to the Committee of the whole house, who are to consider of the papers communicated by her Majesty to this house, relating to the treasonable correspondence carried on with *St. Germain's* and the court of *France*.

*Martis 29 die Februarii, 1703.*

Mr. *Freeman* (according to order) reported from the Committee of the whole house, to whom it was referred to consider of the papers communicated by her Majesty to this house, relating to the treasonable correspondence carried on with *St. Germain's* and the court of *France*, the resolution which they had directed him to report to the House, which he read in his place, and afterwards delivered in at the table, where the same was read, and is as followeth.

*Resolved,*

That it is the opinion of this Committee, that the house be moved, that an humble address be presented to her Majesty, that she will be pleased to

re-assume the just exercise of her prerogative, and take to her self the examination of the matters relating to the conspiracy, communicated to this house by her Majesty; and to give assurance, that they will defend her Majesty's sacred person and government against all persons concerned in the said conspiracy, and all other conspirators whatsoever: And to declare, that the establishing of a Committee of *seven Lords*, for the sole examination of the said conspiracy, is of dangerous consequence, and may tend to the subversion of the government.

*Resolved,*

That the house doth agree with the Committee, that an humble address be presented to her Majesty, that she will be pleased to re-assume the just exercise of her prerogative, and take to herself the examination of the matters relating to the conspiracy, communicated to this house by her Majesty, and to give assurance, that they will defend her Majesty's sacred person and government, against all persons concerned in the said conspiracy, and all other conspirators whatsoever; and to declare, that the establishing of a Committee of *seven Lords*, for the sole examination of the said conspiracy, is of dangerous consequence, and may tend to the subversion of the government.

*Resolved,*

That the said resolution be presented to her Majesty by the whole house.

*Ordered,*

That such members of this house, as are of her Majesty's most honourable Privy Council, do humbly know her Majesty's pleasure, when she will be attended by this house.

*Mercurii*

*Mercurii 1 die Martii, 1703.*

Mr. Secretary *Hedges* reported, that her Majesty had been pleased to appoint to be attended by this house, to-morrow, at four of the clock in the afternoon, at St. *James's*.

*Veneris 3 die Martii, 1703.*

Mr. Speaker reported, that he, with the house, did yesterday present their humble address of the 29th of *February* last, to her Majesty, and that thereupon, her Majesty was pleased to give the gracious answer following.

Gentlemen,

*THE great marks of trust and confidence, which you have given me in this address, are very acceptable to me.*

*I thank you for your advice, and shall constantly exercise my just prerogative for the security and satisfaction of my subjects.*

Upon these proceedings of the House of Commons, the House of Lords, the 28th of *March*, drew up another representation, which they presented to her Majesty, and is as follows.

*Lords REPRESENTATION against the Commons.*

*May it please your most Excellent Majesty,*

**W**E, the Lords spiritual and temporal in Parliament assembled, found our selves obliged (tho' with great unwillingness) to make an humble representation to your Majesty, on the 18th of *January* last, of the injustice done to us by the House of Com-



mons, and it is with the utmost reluctancy we are brought to give your Majesty a second trouble upon the like unhappy occasion. This appears by our silence after the address of the House of Commons presented to your Majesty the 21st of *February*; for though that paper be in effect but one continued misrepresentation of our words and our proceedings, yet we thought our selves secure in your Majesty's great judgment, which would discern where the truth lay, through all the colours made use of to disguise it. And we were willing to hope, that a moderation, which was so little deserved, could not but have a good effect upon the House of Commons. But the votes of the 29th of *February*, which they laid before your Majesty, have convinced us of our mistake, and made it impossible for us to flatter our selves longer with any such expectation: They continue to misrepresent our proceedings, and to solicit the throne against us, and thereby put us upon an absolute necessity of doing our selves justice, in laying a true state of things before your Majesty. When we observe, that the first address of the house of Commons, was ordered the next day after we entered upon the examination of *Boucher*; that on the 3d of *Feb.* when we appointed a day for taking the papers relating to the conspiracy into consideration, the House of Commons appointed a Committee to draw up the address against us, presented to your Majesty on the 21st, which was the day our Committee reported *Keith's* examination; and that their votes of the 29th came from a Committee appointed to consider of the papers communicated to them, the same day we made our address to your Majesty, to issue out a proclamation, for encouraging the discovery of the cypher of the gibberish letters (though they had made a compliment to your Majesty on their reading those papers, and had laid aside all thoughts of them for three weeks together) we cannot without great concern reflect upon the unseasonableness

sonableness of these applications; what can be more likely to prevent the discovery of this dangerous conspiracy, than a disagreement among those who should unite their endeavours in assisting your Majesty to search to the bottom of it? What can more encourage offenders to an obstinate silence, than the prospect of having the examination interrupted by an unhappy breach between the two houses? And what can give greater security to your Majesty's enemies, than to see a foundation laid for such disputes, as will for ever put an end to all parliamentary enquiries into their designs? The Gentlemen of the House of Commons have carried this point so far, that rather than suffer us to proceed quietly in searching into the bottom of this dangerous conspiracy, they do not only reflect on us, but depart from their pretences of respect to your Majesty, and censure your conduct in assisting our examination, as if you had thereby done an injury to your prerogative. We are therefore obliged in duty to your Majesty, as well as justice to our selves, farther to explain the grounds on which we have acted, and to produce precedents to shew, we have done nothing unwarranted by the practice of our ancestors.

We cannot but observe how the House of Commons have varied their style; in their first address, they directly charged the Lords with wresting prisoners out of your Majesty's hands; in their second paper, they say only, we seem to exclude your Majesty from any power over the prisoners; but the charge is alike unjust in both.

They continue to complain of two of our orders, one of which they say was to remove your Majesty's prisoners out of your custody into our own; and the other to commit their examination solely to a Committee of seven Lords chosen and appointed by our selves.

We know not by whom a Committee of the Lords can be chosen, but by the House of Lords; nor can there be any thing more Parliamentary, and more proper for the dispatch and secrecy of an examination, than referring it to a Committee.

This was practised by both Houses of Parliament in the year 1678, and 1679, nor was it objected to either, that they took the examinations solely to themselves: Tho' the Committee of the House of Commons was, in the style of their own books, a Committee of secrecy.

The Lords, the Commons, and the Privy-Council had that plot under examination at the same time, yet there were no interfering of jurisdictions; the papers and the witnesses were conveyed to one another as there was occasion, without any disputes; none of them stopped or delayed the inquiries of anothers, but concurred in promoting them.

We might have expected, that when the House of Commons charged us a second time with violating your royal prerogative, and the known laws of the land, they would have specified what branch of the prerogative we had infringed, or what law, statute or usage we had broken; whenever they think fit to be more particular in the charge, we shall be very ready with our answers.

We shall always contend with the House of Commons in zeal for your Majesty's honour and safety; But we shall never pretend to be meritorious in giving up what we know to be the right of Parliaments: And we are sure your Majesty understands and loves the constitution of the *English* government too well, to approve of such a present: And therefore we must again beg leave to insist on our former representation, as well founded in every particular.

We have no cause to be sorry to hear it has been so universally well received, since we are sure it cannot but be for your Majesty's service, as well

as a full justification of our selves. We were very careful that there should be no harshness in any expressions of our representation; but if they complain of reasoning they cannot answer, or are uneasy to hear truths they cannot deny, it is not our fault.

The House of Commons were certainly in the right, in not producing the precedents, which they say they have, of ill language that has passed between the two house, because it could not have been agreeable to your Majesty.

We must own we never searched our books for that purpose; and we believe that if ever the Commons used the like before, our ancestors thought it unbecoming them to return it; and we think it most proper to be forgotten.

We cannot think that any expressions (by whatever zeal inspired) that are not suitable to the decency which is due from one House of Parliament to another, can shew a respect to your Majesty, or add any force to their arguments.

We do not comprehend what is meant by their saying, we did appropriate to the House of Lords only, the name of a Parliament. There is no foundation for that charge in any word of our representation; nor was there any occasion for such an assertion in the controversy between us: Both houses are alike interested in the point we maintain. We are sure the House of Commons have claimed and exercised such a power of examination and commitment as the Lords insist upon; and we are well assured, that on proper occasions every future House of Commons will do the like again: So that let the Gentlemen of the present House of Commons be as liberal as they please in renouncing their own right, and as much displeased as they think fit with the House of Lords for not following their example, we have this comfort, that your Majesty is too equitable to think amiss of us for defending our parliamentary rights,  
and



and we are sure of having every House of Commons that shall sit hereafter, of our side, as well as every *Englishman* who values the constitution of his country.

There is no passage in our history more notorious, than that the pretended House of Commons in the year 1648, when they could not prevail with the House of Lords, then sitting, to join with them in the intended murder of their King, took upon them first to abolish the House of Lords by a vote, and then to proceed to do that execrable fact by themselves.

It is not therefore to be imagined what the House of Commons can mean, by saying, that assembly was composed of members of both houses. If all other proof of the contrary was wanting, yet the testimony of that blessed, though unfortunate King, is abundantly sufficient, who made it one of his exceptions to that detestable court at his trial.

We can never call to mind that fact without horror, and yet we are obliged by law to commemorate it every year; and surely it can never be mentioned more usefully than upon such an occasion, when the strange usage of one House of Parliament by another, makes it impossible not to reflect on the miserable consequences, that have formerly followed from such differences.

When the Gentlemen of the House of Commons act according to the measures taken in those times, they ought not to be offended if they are remembered by the Lords. If they will take upon themselves, to stop the issuing out your Majesty's writs for filling up their house, and that in several places, and for a long time, whereby they make themselves an imperfect representation, which is a wound to the constitution, a wrong to the boroughs who have a legal right to send representatives, and an injustice to your Majesty, who has an undoubted title to the service and attendance of all the members; can they

they wonder, or ought they to complain, if we presume to tell your Majesty, that very few things were less excusable in that unhappy House of Commons, than their refusing to fill up their body, and compleat the representation.

These beginnings are very dangerous: It is not easy to foresee how far such a practice may be carried, or what effects it may have upon the boroughs that suffer the present wrong, or upon others who may apprehend the like usage; and who can say, but in aftertimes an ill Prince may take advantage of such precedents, and think himself justified in withholding his writs from some, by as good law as the Commons can shew, for pretending to stop them from issuing to others?

The Commons have made three addresses to your Majesty upon this occasion, yet have not stated the matter in dispute fairly in any one of them. The plain matter of fact is this; *Boucher, Ogilby, &c.* being seized by the custom-house Officers on the coast of *Sussex*, as they landed from *France*, were sent for to be brought to town by Messengers; the Lords having resolved to examine these persons themselves, ordered the Messengers to bring them to the house, and committed them to the black-rod, in order to their examination. The question is, whether this proceeding of the House of Lords was a breach of any law, or contrary to the custom of Parliament? We asserted it was not, and as we humbly apprehend, we proved our assertion, by undeniable reasons, and we assured your Majesty we could justify it by precedents.

It appears by our records, that we have at all times, when we thought it expedient for the publick good, not only taken prisoners out of the custody of Messengers (which is but a temporary confinement in order to the examining persons, or while they are under examination) but taken them out of any other custody, and put them sometimes into the custody

custody of your Majesty's Officers attending the House of Peers, sometimes removed them from one prison to another, as the house thought most safe and proper for their examination.

Persons condemned and under sentence of death, may be most properly called the prisoners of the crown, when their lives and estates, as well as liberties are entirely at mercy; yet the House of Lords sent for several in those circumstances from the farthest parts of *England* to be examined.

We could produce precedents in all times, when any thing of this nature has been before the house; the most ancient records furnishing the clearest and most frequent instances of the jurisdiction of the Lords, in examining, trying, and punishing all great offenders.

But we shall at present confine our selves to the proceedings in respect to the popish plot, in the reign of your Majesty's royal uncle, (except in some few instances in both houses, as well before as after that time) not only because that was the last conspiracy that fell under a parliamentary examination; but because both Houses of Parliament entred into the enquiry with equal zeal.

And we beg leave to annex to this our humble address, some extracts of the proceedings of both houses in that enquiry.

We desire to observe, that though the King mentioned that plot in his speech, at the opening of the session; yet he was so far from communicating the particulars to the Parliament, or desiring them to look into it, that he directly told them, he would leave that matter to the law.

He was not very desirous of having the Parliament meddle with that enquiry, and therefore 'tis reasonable to suppose, he would not have been silent, if their proceedings had been a violation of the prerogative, and the known laws of the land.

We beg leave to make this single remark, on such of the precedents as relate to the removal of the popish priests after sentence of condemnation, that this was taken notice of by the Commons, and several messages passed between the two houses about them: The Commons were earnest that they should be executed, and insisted to have them sent back to the several prisons for that purpose; but they never pretended to deny that the Lords had power to send for them, or change the custody.

The Commons in their second address pretend to have been sensibly affected, and provoked to their harsh treatment of the Lords, by what passed in the Lords house the 29th of *January*, which was almost six weeks after their address was presented.

It looks as if they wanted reasons to justify the ordering that address, when they are forced to defend it by arguments drawn from facts which happened so long after.

If the Commons had considered our address of the 29th of *January*, or 15th of *February*, they would have found in them no contradictions, or counter-orders to your Majesty, with which they charge us. We were informed of several papers that had not been communicated to us; those we desired, and we received them by your Majesty's command; and have, we hope, made use of them for your Majesty's service and the publick safety. We have had the happiness that our zeal has been more than once approved by your Majesty: And we leave the Commons to justify their own coldness and indifference in a point of such high concern.

If we look back on the steps the Commons have made in this whole matter, they are such as will hardly be believed hereafter: And we can desire nothing more for our justification, than that our proceedings and theirs may be prepared.

When



When the papers relating to this conspiracy were laid before them, they contented themselves with reading them, and without offering any advice or assistance, gave your Majesty thanks for laying the papers before them, and expressed their satisfaction in your Majesty's wise conduct and great care of your people. This was certainly justly due to your Majesty's prudent administration, but was not all that might have been expected from a house of Commons, when your Majesty had laid before them the account of such a dangerous conspiracy.

Thus the matter rested for several weeks ; and when at last the House of Commons thought fit to take up a second time the consideration of those papers, instead of doing what we hoped, and the kingdom expected from them, all they did was to find new cause of displeasure against the Lords, to complain of what your Majesty had done, to solicit you to re-assume the just exercise of your prerogative, and to desire you to stop our proceedings, as of dangerous consequence, and what might tend to the subversion of the government.

This conduct seems very unaccountable : And when they had not thought fit to pass any judgment on the conspiracy, 'tis hard that the enquiry into it should be so severely censured.

The Commons confine what we spoke in general terms, of the fatal consequences that have happened in most countries in *Europe*, from the unhappy differences that have arisen between the estates of the several kingdoms, to the instance of one country : The observation was general, and the overthrow of the liberties of most of our neighbours sprung from this root.

But we are surprized, that the House of Commons should single out that instance of a revolution in a neighbouring country, where the Clergy and the Commons were prevailed upon by the management of the court, to carry their resentments against the  
Lords

Lords so far, that they delivered up the authority of the Lords, the freedom of the people, and made a total alteration of the government.

We cannot imagine what is meant by calling this treachery of the Commons and Clergy, in betraying the liberties of their country, their uniting in the publick defence; nor can we conceive, how this comes to be mentioned on this occasion: We hope there is no danger of such union amongst us for such purposes; and we think your Majesty and your people are equally concerned in this insinuation.

'Tis wonderful that the Commons should magnify their own care in examining our journals, reflect on us for not looking into our own books, and at the same time cite two precedents, in which they are entirely mistaken, and which prove the direct contrary to what is inferred from them.

The Lords in their representation affirm, that the Commons by appealing directly to the throne against the House of Lords, and charging them with attempts of the highest nature, without first asking a conference, had done a thing unprecedented. The Commons to prove the contrary, cite the address presented to your Majesty on behalf of the Bishop of *Worcester*, and the address of the Lords to the late King on behalf of four Lords named in their address. We crave leave to state those two cases. The Commons had censured the Bishop of *Worcester* without giving him any opportunity of being heard: They had voted him unchristian, which surely is aspersing the innocent without possibility of reparation, as well as it was condemning him without a trial, and made an address to your Majesty to remove him from being Almoner. This proceeding seemed very extraordinary with respect to your Majesty; and very unparliamentary with respect to the House of Lords, of which the Bishop was a member, and yet no notice was taken of

them : Upon this the Lords made an application to your Majesty on behalf of the reverend prelate, that he might not suffer in your Majesty's opinion, before he had an opportunity of making his defence.

The case of the four Lords was this ; the Commons having at the bar of the House of Lords impeached them for high crimes and misdemeanors, the next day made an address to the late King to remove them from his presence and councils for ever : The House of Lords thought this an attempt of the highest nature upon their judicature, that while the causes were depending before them in Parliament, the Commons should quit the part they had taken of accusers, and pretend to be the Judges themselves, and solicit the King to put their sentence in execution immediately. But yet they proceeded to act with such a moderation as was scarce to be justified ; they forbore expostulating with the Commons, much less did they appeal to the throne against them, they only desired the King not to pass any censure upon them before they were tried ; they took no notice that the Commons had made any address, and only endeavoured to prevent the injustice and oppression which might have been done to their own members, and the affront offered to their judicature, without making the least reflection on this proceeding ; and they had no other way of acting, for no conference could have prevented the impression that might have been made on the King by such an application of the Commons.

Besides, in both these cases the Commons were the aggressors ; the first applied to the throne, and made it necessary for the Lords to follow them. Thus far these instances may be of use, to shew by what steps the Commons rose to this way of addressing against the House of Lords ; they began these attempts in the case of particular Lords, which now they

they put in practice against the whole body of the Peers.

The Lords will think themselves concerned in all times, to observe and maintain the laws and usage of Parliaments in impeachments, and this they did with all possible exactness upon the occasion of the impeachments of those four Lords; but they could not judge it reasonable to let the accusers share with them in their judicature. And if the Commons in times to come shall so far forget themselves, as to endeavour to blast men's reputation, by exhibiting articles, when they are not able or prepared to maintain their charge, the Lords will always look upon themselves as bound to do equal justice, and discharge the innocent. Nothing can truly lessen or weaken the force and awe of impeachments, but a partial use of them: While they continue to be the equal instruments of publick justice, they will have their weight in all places; but if once they are made use of to defame men only, without thoughts of bringing them to trial, impeachments will lose their terror, and the House of Commons will not encrease their honour or authority: And if in that case the House of Lords could not do justice to the accused, they would be the only judicature which had the unhappy power of condemning, but not of acquitting.

The Lords are far from pretending to be the sole examiners of conspiracies, if the Commons will do their duty in concerning themselves for the publick safety; but if they will shew so little zeal as the Gentlemen of this House of Commons have done; if when they are told of conspiracies from the throne, they will concern themselves so little as to leave the enquiry to others, the Lords must of consequence be the sole enquirers, or else Parliaments must be totally excluded from such examinations.



The Commons in their second address complain, that they are accused most unjustly of exciting and earnestly desiring your Majesty to exert your prerogative against the House of Lords. The words of their first address are so plain, that no other construction could be reasonably put upon them, and we are now very sure we did not mistake their meaning, since in the votes which they have laid before your Majesty, they have thought fit to explain themselves, and in direct terms desire your Majesty to re-assume the just exercise of your prerogative, and take to your self the examination of the matters relating to the conspiracy.

There needs no wresting or straining these words, to justify the interpretation we made of their first address, and surely they had forgot what they said in their second, when they came to pass those votes, by which the sincerity of their professions, when they pretend to desire that the remembrance of those unhappy differences may be blotted out, does best appear. But we are still at a loss to know what they truly mean by your Majesty's re-assuming your just prerogative.

Your Majesty was pleased to lay the papers relating to the conspiracy before us, and you have given your royal approbation to the method in which we had put the examination: And it seems a strange averfeness to parliamentary enquiries, that they would not leave it possible, even with the concurrence of the crown, for either House of Parliament to enquire into conspiracies; tho' at the same time we must freely own, that if this power be not lodged in us by the constitution, it ought not, nor, indeed, cannot be given and delegated by the crown.

*Most gracious Sovereign,*

We humbly ask pardon for having detained you so long, upon a subject which cannot but be disagreeable to your Majesty.

We

We beg leave to conclude, with expressing the just sense we have of that virtuous and truly royal moderation, which your Majesty has shewn upon this occasion, in not suffering your self to be prevailed upon, to do any thing to the prejudice of the constitution, from whatsoever hands the invitation comes. It shall be our daily prayers to Almighty God, that he will long preserve and prosper your Majesty for the good of this kingdom; and that your reign may be as glorious all the world over, as it is happy to all your people.

Her Majesty's most gracious answer to the representation, or address, runs thus:

My Lords,

*I Hope none of my subjects have any desire to lessen my prerogative, since I have no thought of making use of it, but for their protection and advantage.* Queen's answer.

*I look upon it as a great misfortune, when any misunderstandings happen between the two Houses of Parliament, which cannot be without so much prejudice to the publick, that I shall never omit any thing in my power to prevent the occasions of them.*

## PRECEDENTS out of the *Journals of the House of LORDS.*

2 die Marti, 1675.

A paper was presented to the house, being examinations taken by some Justices of the peace in the county of Surrey, concerning some blasphemous speeches spoken by *John Taylor*, now a prisoner at the goal at *Guilford*, which paper being read, the house ordered as follows, viz.

A a 3

Ordered,

*Ordered,*

That the Serjeant at Arms bring in safe custody to the bar of this house, on *Friday* next, at ten of the clock in the forenoon, the body of the said *John Taylor*.

*Die Lunæ 21 Octobris, 1678.*

His Majesty acquaints the Lords and Commons with a plot against his person, in a speech, part of which speech, so far as relates to the plot, follows, *in hæc verba*:

‘ I now intend to acquaint you, (as I shall always  
‘ do with any thing that concerns me,) that I have  
‘ been informed of a design against my person by  
‘ the Jesuits; of which I shall forbear my opinion,  
‘ lest I may seem to say too much, or too little, but  
‘ I will leave the matter to the law; and, in the mean  
‘ time, will take as much care as I can, to prevent  
‘ all manner of practices by that sort of men, and  
‘ of others too, who have been tampering in a high  
‘ degree by foreigners, and contriving how to intro-  
‘ duce popery among us.

Whereupon the house made the following address.

‘ We your Majesty’s most dutiful and loyal sub-  
‘ jects, the Lords spiritual and temporal in Parlia-  
‘ ment assembled, having been acquainted by your  
‘ Majesty, that there is information given of a hor-  
‘ rible design against your Majesty’s sacred life,  
‘ (which God long preserve) are humble suitors to  
‘ your Majesty, that you would vouchsafe to com-  
‘ municate to us (as far as your Majesty shall think  
‘ fit) such papers as have any tendency to the dis-  
‘ covery thereof, or of any other design against the  
‘ protestant religion, as it is now established in the  
‘ church of *England*, that we may use our utmost  
‘ endeavours

‘endeavours to serve your Majesty, according to our  
‘bounden duty and allegiance.

23 *Octobris*, 1678.

The papers concerning the plot were delivered to the deputy Clerk of the Parliaments, by one of the Clerks of the Council.

Lords Committees were appointed to consider of the papers transmitted from the Council by his Majesty's directions, concerning the discovery of the horrid design against his Majesty's sacred person, or of any other design against his Majesty, or his kingdom, by introducing popery, whose Lordships have power to send for persons, papers, and records, as they shall see cause.

30 *Octobris*, 1678.

*Ordered,*

That *Nathaniel Thomson*, who is now in the custody of *William Sorocold*, for printing popish books for *James Thomson*, shall stand committed to the prison of the *Gate-house*, at *Westminster*, during the pleasure of this house.

31 *Octobris*, 1678.

*Ordered,*

That the Lords with white staves do attend his Majesty, humbly to desire him from this house, that the papers of *Mr. Whitebread* and *Mr. Micho*, which have been read at the Council-table, may be, by his Majesty's command, brought before the Committee to examine papers, relating to the horrid design against his Majesty; and also that the Clerks of the Council may bring the minutes, taken by them, upon the examination of *Titus Oates*, and others, before the Council, concerning this matter.

A a 4

4 *Novembris*,



4 Novembris, 1678.

Ordered,

That the Lords Committees appointed to examine the Lords who are prisoners in the *Tower of London*, for treason, shall also examine such other persons, who are now prisoners in the *Tower* for treason, as their Lordships shall think fit, and also Sir *Ellis Leighton*, now prisoner in *Newgate*; and that the Lord Chief Justice of *England* do assist their Lordships at such times as they shall appoint; and that one of the Clerks of the Privy-council do attend their Lordships.

8 Novembris, 1678.

Ordered,

That the Lords, with white staves, do attend his Majesty, humbly to desire from this house, *that the letter of Mr. Coleman, of the 29th of September, 1675, to father Le Chese, and another of his to father Le Chese, wherein he owns the sending the said letter, and Monsieur Le Chese's letter, whereby he owns the receipt thereof, which have not been read in this house, may, by his Majesty's order, be brought hither.*

The Lord Treasurer reported his Majesty's answer,

*That his Majesty will give order, that the said letters shall be brought to this house, as soon as may be.*

18 Novembris, 1678.

Ordered,

That *Edward Coleman*, now a prisoner in *Newgate* for treason, be brought by the Keeper of *Newgate*,

gate, before the Lords Committees to peruse letters and papers, to-morrow at nine of the clock in the forenoon; and that the Duke of *Monmouth* be desired to send a sufficient guard of soldiers, to assist the Keeper of *Newgate*, in the service of bringing and returning *Edward Coleman*.

*Ordered,*

That the Lords, with white staves, do humbly desire his Majesty, that his Majesty will please to give order, that the papers of Mr. *Goodwin*, now in the hands of the Clerks of the Council, may be brought before the Lords Committees appointed to consider of, and prepare the evidences for the trial of Mr. *Coleman*.

23 *Novembris*, 1678.

*Ordered,*

That the Serjeant at Arms attending this house, his deputy, or deputies, do forthwith repair to *Stratford* upon *Avon* in *Warwickshire*, and bring thence the body of Mr. *John Gerard*, supposed to be a priest, and one other person mentioned, but not named, (in a letter dated there the 20th of *November*) and subscribed *Simon Cale*, Mayor, *John Wolmer*; in which it is recited, that they were in custody there, for refusing the oath of allegiance, and bring them in safe custody to the bar of this house.

27 *Novembris*, 1678.

*Ordered,*

That Dr. *Lower*, and Dr. *Warner*, be, and are hereby appointed to visit Mr. *White*, alias *Whitebread*, being sick near *Weld-house*, and give this house an account to-morrow morning, in what condition of health they find him.

28 No-

28 *Novembris*, 1678.*Ordered,*

That the Clerk of his Majesty's Privy-council, in whose custody the depositions lately taken at the Council-board are, which concern the Queen's Majesty, be, and is hereby appointed to bring the said depositions before this house to-morrow at nine of the clock in the forenoon.

29 *Novembris*, 1678.

The house received an account, that Dr. *Lower* and Dr. *Warner* have visited *Whitebread*, and they find that his former distempers have left him, and he hath now only a *Tertian Ague*; and their opinion is, that he may be removed safely upon his intermitting days; It is ordered, that the Serjeant at Arms attending this house, shall, to-morrow, attach the body of Mr. *White*, alias *Whitebread*, and carry him forthwith to the prison of *Newgate*, there to remain in safe custody, 'till he shall be delivered by due course of Law.

Upon information given to this house, that one *Daniel Maccarty*, a Romish Priest, is now under custody in *Thetford* in the county of *Norfolk*: It is ordered, that the Serjeant at Arms attending this house, his deputy or deputies, shall forthwith repair to *Thetford* aforesaid, and bring thence the body of the said *Daniel Maccarty*, in safe custody to the bar of this house.

20 *Decembris*, 1678.

Whereas *Daniel Maccarty*, a Romish Priest, was, by order of the 29th of *November* last, brought from the goal of *Thetford*, in the county of *Norfolk*, by the

the Serjeant at Arms attending this house, and is now in his custody here; it is this day ordered, by the Lords spiritual and temporal, in Parliament assembled, that the Lords Committees for examining persons and papers, for discovery of the horrid design against his Majesty's person and government, shall examine the said *Daniel Maccarty*: And if their Lordships find, that he is not charged with any particulars relating to the said design, he is to be remitted and left to the law; but if otherwise, their Lordships are to report to the house what they find concerning him.

3 Decembris, 1678.

Upon information given to this house, by the Lord *Windsor*, that one *Edward Whitaker* stands committed in the city of *Worcester*, for some unbecoming words by him uttered, as is certified in a letter to his Lordship, signed *Jo. Tyas*, Mayor: It is ordered, that the said Mr. *Whitaker* shall give bail before the Mayor of *Worcester*, for his appearance before the Lords in Parliament, within eight days next after such bail given.

*Die Veneris*, 13 die Decembris, 1678.

*Edward Whitaker*, being called for, to answer the charge against him, sent up from the Mayor of *Worcester*, but being not to be found: It is ordered, that if the said *Edward Whitaker* come not, and render himself before the house rises, he shall be attached; and he not coming, it is ordered, by the Lords spiritual and temporal, in Parliament assembled, that the Serjeant at Arms attending this house, or his deputy, do forthwith attach the body of *Edward Whitaker* of *London*, Gentleman, and bring him in safe custody to the bar of this house to-morrow morning, to answer to the informations put in-

to



to this house, upon oath, against him: And this shall be a sufficient warrant on that behalf.

*Die Sabbati 14 die Decembris, 1678.*

Whereas *Edward Whitaker* was this day brought to the bar by the Serjeant at Arms attending this house, to answer to the informations against him, which he denies, alledging, that he hath witnesses to clear himself of the matters charged on him: Upon consideration had therefore, it is ordered, by the Lords spiritual and temporal, in Parliament assembled, that the said *Edward Whitaker* may, and shall have order for summoning his said witnesses, to be heard *viva voce*, on the second day of the sitting of the Parliament, next after *Christmas*, if he desires it; at which time also, the witnesses, who have informed against him, shall be summoned to be heard *viva voce*; and that in the mean time, the said Serjeant at Arms shall deliver the said *Edward Whitaker*, into the prison of *Newgate*, there to remain in safe custody 'till further order: And this shall be a sufficient warrant on that behalf.

*3 Decembris, 1678.*

Upon information given to this house, that one ——— *Barnesly*, a Romish Priest, is now under custody in the city of *Worcester*, it is ordered, that the Serjeant at Arms attending this house, his deputy, or deputies, shall forthwith repair to the city of *Worcester*, and bring thence the body of the said ——— *Barnesly*, in safe custody, to the bar of this house.

*Die Sabbati, 14 die Decembris, 1678.*

Whereas *Henry Barnesly*, who was by order of this house, sent for from the goal of *Worcester*, was  
this

this day brought to the bar by the Serjeant at Arms attending this house, and there examined, being supposed to be a Popish Priest: It is ordered, by the Lords spiritual and temporal, in Parliament assembled, that the said *Henry Barnesby* shall, by the said Serjeant at Arms, or his deputy or deputies, be returned into the goal in *Worcester*, there to remain in safe custody, 'till he shall be thence delivered by due course of law: And this shall be a sufficient warrant on that behalf.

*Die Lunæ 23 die Decembris, 1678.*

Upon reading the petition of *Henry Barnesby*, now in the custody of the Serjeant at Arms attending this house, shewing that being by order of this house brought from *Worcester*, and by like order, to be returned thither again; and that being very old and sickly, he is not able to bear the journey in this hard season of the year; and therefore praying, that he may remain here upon bail: It is ordered, by the Lords spiritual and temporal, in Parliament assembled, that the said *Henry Barnesby* (being charged to be a Popish Priest) shall, by the said Serjeant at Arms, be delivered into the Prison of the *King's-bench*, there to remain in safe custody, 'till he be better able to be returned to *Worcester*, in order to his trial there: and this shall be a sufficient warrant on that behalf.

*6 Decembris, 1678.*

Upon report made by the Earl of *Clarendon*, from the Lords Committees to examine persons, and papers, &c. that their Lordships think it necessary that Sir *Henry Titchborne*, a Popish recusant, now prisoner in the goal at *Winchester*, be brought up to town: It is ordered, that the Serjeant at Arms attending this house, his deputy or deputies, shall

shall forthwith repair to *Winchester*, and bring thence the said Sir *Henry Titchborne*, and deliver him into his Majesty's *Tower of London*, there to remain in safe custody, 'till farther order: And this shall be a sufficient warrant in that behalf.

*To Sir George Charnock, Knight, Serjeant at Arms attending this house, and to the Keeper of the goal at Winchester, and to the Constable of his Majesty's Tower of London, and their respective deputies; as also, to all his Majesty's officers, civil and military, to be aiding and assisting in this service.*

20 Decembris, 1678.

Upon information given to this house upon oath, that *Tho. Thorn*, now, or late, servant to *Richard Tasbrough*, Esq; hath uttered dangerous and treasonable words, and that he is at present in the goal at *Bury* in *Suffolk*: It is ordered, that the Serjeant at Arms attending this house, or his deputy or deputies, shall forthwith repair to *Bury*, and bring thence the body of the said *Thomas Thorn*, in safe custody to the bar of this house, to answer thereunto.

21 Decembris, 1678.

Whereas *Richard Tasbrough*, Esq; was this day brought to the bar, by the Serjeant at Arms, and denied all that was alledged against him; and whereas there is a warrant of the Lord Chief Justice of *England*, issued against him; it is ordered, that the Serjeant at Arms deliver the said *Richard Tasbrough* in safe custody, to such person or persons as the Lord Chief Justice of *England* shall direct.

29 Martii,

29 Martii, 1679.

Upon information given to this house, that *Richard Tasbrough*, Esq; who is charged to be guilty of the late horrid conspiracy, for which he was committed to the prison of the *King's-Bench*, hath since been enlarged upon bail, and is now to be brought to his trial at the assizes at *Bury*, in the county of *Suffolk*: Upon consideration had of the case of the said *Richard Tasbrough*, it is ordered, by the Lords spiritual and temporal, in Parliament assembled, that the Judge of assize for that county be, and is hereby directed, that his Lordship proceed no further upon the trial of the said *Richard Tasbrough*, than to the indictment of him, and the finding thereof by the Grand Jury; and that the said *Richard Tasbrough* may be safely sent up to *London*, in order to his trial, to be had at the bar of the court of *King's-Bench*. And it is further ordered, that Mr. *Thomas Beake*, one of the Messengers attending his Majesty's Council-board, be, and is hereby authorized and required, with all speed, to attend the said Judge of assize for this purpose, and to take care of the execution of this order, as to the bringing up the said *Richard Tasbrough*, in safe custody, in order to his intended trial: And for so doing this shall be a sufficient warrant.

26 Decembris, 1678.

Ordered,

That it be referred to the Lords Committees for examining persons and papers, to examine *Richard Tasbrough* and *Tho. Thorn*.

Upon information to this house by the Lord Viscount *Newport*, that one *Valentine Harcourt*, a Popish Priest, is taken, and now in custody in the goal of *Shrewsbury*: It is ordered, that the Sheriff for the county of *Salop*, be, and is hereby required, to take, and give order for the sending of the said *Valentine*



*Valentine Harcourt* in safe custody, to appear at the bar of this house, and that the charge of the said Sheriff shall be allowed upon his account in the court of *Exchequer*. And it is ordered, that the Sheriffs of the respective counties, through which the said *Valentine Harcourt* shall pass in his being sent up, as aforesaid, be aiding and assisting to the furtherance thereof, as occasion shall require.

*Die Veneris 21 die Martii, 1678-9.*

Upon report made from the Lords Committees, for examining matters relating to the discovery of the late horrid conspiracy, that Capt. *Francis Spalding*, deputy governor of *Chepstow* Castle, who was by order of this house, dated the 21st day of *November* last, committed to the prison of the *King's-bench*, for matters wherewith he stands charged, hath since that time been enlarged upon bail, and being upon bail, commands still at *Chepstow* Castle, as deputy-governor, and hath misbehaved himself, as hath appeared to the said Lords Committees: It is thereupon ordered, by the Lords spiritual and temporal, in Parliament assembled, that the Serjeant at Arms attending this house, or his deputy or deputies, do forthwith attach the body of the said *Francis Spalding*, and bring him in safe custody to the bar of this house: And this shall be a sufficient warrant on that behalf.

*Die Jovis 27 die Martii, 1679.*

Captain *Francis Spalding* being brought to the bar, by the Serjeant at Arms, was asked, whether he is not under bail? which he acknowledged; and that Sir *Ralph Delaval* and Mr. *Banks* are his bail, taken in the *King's-bench*; and being asked, why he went down to *Chepstow* Castle, being a prisoner under bail, and by whose order? he said, he had no order for it, but went of his own head. Then the matter

matter wherewith he was charged, and for which he was committed on the 21st of *November* last, was read, and also the deposition of *Thomas Crowder*, a soldier of that garrison, was read, &c.

Whereas Captain *Francis Spalding*, who was on the 21st of *November* last, committed to the prison of the *King's-Bench*, there to remain in safe custody 'till further order, hath since procured his enlargement upon bail, and repaired to *Chepstow* Castle, as deputy governor thereof, and misbehaved himself there, as appeareth by the deposition of *Thomas Crowder*, and other matters, upon which he was this day examined at the bar, being now in custody of the Serjeant at Arms attending this house: It is ordered, by the Lords spiritual and temporal, in Parliament assembled, that the said *Francis Spalding* be re-committed to the prison of the *King's-Bench*, there to remain in safe custody, 'till further order; and that the said Serjeant at Arms, or his deputy, take care to convey him, the said *Francis Spalding*, to the said prison: And this shall be a sufficient warrant on that behalf.

25 Martii, 1679.

Upon report made by the Earl of *Clarendon*, from the Lords Committees for examining matters relating to the discovery of the late horrid conspiracy, that their Lordships are of opinion, that *Edward Turner*, a Priest and Jesuit, who hath been examined before them, and is now in the custody of *Francis Strutt* a Messenger, should be committed to prison: It is ordered, that the said *Francis Strutt*, shall forthwith deliver the said *Edward Turner* into the prison of the *Gate-house*, at *Westminster*, there to remain as a prisoner, 'till he shall be delivered by due course of law.

To Francis Strutt, Messenger, his deputy or deputies, and to the Keeper of the prison of the Gate-house.

15 Aprilis, 1679.

Whereas Sir *William Andrews* is seized on, and brought to town in custody, as an agent in the late horrid conspiracy against the King: It is this day ordered, that the officer, in whose custody the said Sir *William Andrews* is, shall forthwith deliver the said Sir *William Andrews* into the prison of the Gate-house at *Westminster*, there to remain a prisoner, 'till further order.

18 Aprilis, 1679.

Upon report made from the Lords Committees for examining matters relating to the discovery of the late horrid conspiracy, that their Lordships have received information made upon oath, that Sir *William Andrews*, now prisoner in the Gate-house at *Westminster*, is engaged in the conspiracy against his Majesty's person and government: It is thereupon ordered, by the Lords spiritual and temporal, in Parliament assembled, that the Keeper of the Gate-house aforesaid, be, and is hereby required to take care, that the said Sir *William Andrews* be forthwith conveyed and safely delivered into the Tower of *London*, there to remain a prisoner, 'till he shall be discharged by due course of law; and for so doing, this shall be a sufficient warrant.

21 Aprilis, 1679.

Upon report from the Committee for examinations, that *James Allen*, who was taken into custody, being charged with encouraging *Elizabeth Oxley*

to

to fire houses, hath been examined by your Lordships, and denieth what is charged upon him; and in regard the examinations taken concerning a house fired in *Fetter-lane*, are before a Committee of Commons: It is ordered, that the Serjeant at Arms attending this house, do forthwith carry the said *James Allen* to the said Committee, to be examined, and disposed of as they please.

Upon report from the Committee of examinations, that their Lordships think it necessary, that *William Sturges*, now a prisoner in the goal at *Chelmsford*, should be brought to town: It is ordered, that the Serjeant at Arms attending this house, do forthwith repair to the goal at *Chelmsford*, in *Essex*, and bring thence the body of the said *William Sturges*, and deliver him into the prison of the *Gate-house*, at *Westminster*, there to remain a prisoner, 'till further order.

23 Aprilis, 1679.

Upon report from the Lords Committees for examinations, that their Lordships find it requisite, that *David Lewis*, who hath been tried and condemned as a Popish Priest, at the assizes held for the county of *Monmouth*, and is now in goal there, may be brought to town: It is ordered, that the Sheriff for the said county of *Monmouth*, be, and is hereby required to take care, and give order for the speedy conveying the said *David Lewis*, in safety from the said goal, to be delivered into the prison of *Newgate*, the charges of which service shall be allowed to the said Sheriff upon his account in the *Exchequer*.

The like order for *Roger Hanslip*, in the goal at *Gloucester*.



The like order for *John Kemple*, in the goal at *Hertford*.

The like order for *Francis Johnson*, alias *Webb*, in the goal at *Worcester*.

8 Maii, 1679.

The Earl of *Clarendon* reported from the Lords Committees for examinations, that *William Harcourt* the Jesuit is taken, and now in the hands of the officer that took him: It is ordered, that the said *William Harcourt* be brought to the bar presently.

*Eodem die, post meridiem.*

*William Harcourt* was brought to the bar, and being there charged with treason, the house made the following order.

Whereas *William Harrison*, alias *Harcourt*, was this day brought to the bar, and was there charged with high treason: It is ordered, that the Gentleman-usher of the black rod, attending this house, do take special care, forthwith to convey the said *William Harrison*, alias *Harcourt*, in safety to *Newgate*, there to remain a prisoner, 'till he shall be discharged by due course of law.

To the Gentleman-usher of the black rod, attending this house, &c.

Die Lune 19 Maii, 1679.

Whereas *Richard Gerard*, Esq; is charged upon oath with treason: It is ordered that the Keeper of the prison of the *Gate-house*, at *Westminster*, (in whose custody the said *Richard Gerard* now is) be, and is hereby required forthwith to take care for the conveying of the said *Richard Gerard* to the prison

of

of *Newgate*, there to remain a prisoner, 'till he shall be discharged by due course of law: And this shall be a sufficient warrant in that behalf.

30 *Octobris*, 1680.

It being signified to this house, that *Oliver Plunket*, the titular Primate of *Ardmagh* in the kingdom of *Ireland*, is, by his Majesty's order, brought over hither, in order to his trial here, and is now in custody in the hands of a Messenger: It is ordered, that the Messenger, in whose hands the said *Oliver Plunket* now is, be, and is hereby authorized and required, forthwith to convey and deliver the body of the said *Oliver Plunket* into the prison of *Newgate*, and that the Keeper of the said prison do keep him there in safety, until he shall be discharged by due course of law: And that the said Keeper and his under-officers do take care, that the said *Oliver Plunket* be kept as a close prisoner, till the pleasure of this house be farther signified; and this shall be a sufficient warrant in that behalf.

*To the Messenger in whose custody the said Oliver Plunket is, and also to the Keeper of the prison of Newgate, his deputies and under-officers, and every of them.*

4 *Januarii*, 1680.

*Ordered,*

By the Lords spiritual and temporal, in Parliament assembled, that Mr. Attorney-general do peruse the information read this day, and draw warrants for the commitments of Sir *John Fitzgerald*, Colonel *Pierce Lacy*, and Lieutenant Colonel *Bradly*, as may be available in the law, and attend the Judges for their assistance therein, and present the

B b 3

same

same to the house to morrow, at ten of the clock in the forenoon.

*Ordered,*

That Sir *John Fitzgerald*, Colonel *Pierce Lacy*, and Lieutenant Colonel *Bradly*, do remain in the custody of the Pursevant, as now they are, 'till the house gives further order.

5 Januarii, 1680.

*Ordered,*

By the Lords spiritual and temporal, in Parliament assembled, that Sir *John Fitzgerald* be committed to the *Gate-house* for treason, in compassing the King's death, and in levying war, and practising to introduce a foreign force into the kingdom of *Ireland*, and to depose the King from the Crown of *Ireland*; and that the Messenger, in whose hands the said Sir *John Fitzgerald* is, be, and is hereby authorized and required, forthwith to deliver and convey the body of the said Sir *John Fitzgerald* into the prison of the *Gate-house*; and that the Keeper of the said prison do receive and keep him there in safe custody, 'till he shall be discharged by due course of law: And this shall be a sufficient warrant in that behalf.

*Ordered,*

By the Lords spiritual and temporal, in Parliament assembled, that *Pierce Lacy*, Esq; be committed to *Newgate* for treason, in compassing the King's death, and in levying war, and practising to introduce a foreign force into the kingdom of *Ireland*, and to depose the King from his Crown of *Ireland*; and that the Messenger, in whose hands the said *Pierce Lacy* now is, be, and is hereby authorized and required, forthwith to convey and deliver the body of the said *Pierce Lacy*, into the prison

son of *Newgate*; and that the Keeper of the said prison do receive, and keep him there in safe custody, until he shall be discharged by due course of law: And this shall be a sufficient warrant on that behalf.

The like order for Colonel *William Bradly*.

*Die Martis, 10 die Decembris, 1689.*

*Ordered,*

By the Lords spiritual and temporal, in Parliament assembled, that Mr. *Vernatti*, now in custody, do stand committed to the Gentleman-usher of the black rod attending this house. And it is further ordered, that the said Gentleman-usher go to the lodging of the said *Vernatti*, and secure his papers, and seal them up in his presence, and set a guard on his house or lodging.

## PRECEDENTS *out of the* JOURNALS *of the House of Commons.*

24 Martii, 14 Car. II.

**U**PON information, that *George Withers* had been the author and publisher of a scandalous and seditious pamphlet, to enrage the people, and to vilify and defame the Members of this house, and to blemish the honour and justice of this house, and their proceedings, and was now a prisoner in *Newgate*.

*Resolved,*

That the said *George Withers* be brought into custody of the Serjeant at Arms attending this house, or



his deputy, to the bar of this house, at four of the clock this afternoon, to be examined touching the matters objected against him; and the Keeper of *Newgate*, or his deputy, is to cause him to be brought accordingly.

*Resolved,*

That this house do adjourn 'till three of the clock this afternoon.

*George Withers* being then brought in custody to the bar of this house, and the scandalous seditious libel, with which he stands charged, being shewn unto him, the same being in two distinct papers; upon view of the first of them, he declared, *that the same might be his hand, but that it was but parcel of what he intended*; and the other writing being shewn to him, he confessed the same to be of his own hand-writing; and two witnesses being called in, *viz. Henry Northrop* and *Robert Heyborne*, and testifying that they took the said papers from under *Mr. Withers's* hand, and that he was writing part of them just when they were taken from him; and that he did, upon examination before *Mr. Attorney-General*, confess the said papers to be of his own contriving and drawing.

*Resolved upon the question,*

That *George Withers*, who was this day brought from the prison of *Newgate* to the bar of this house, be sent Prisoner, and delivered into the custody of the Lieutenant of the *Tower*, there to be kept in close custody, and to be denied pen, ink, and paper, and debarred from having any company to come unto him. And it is referred unto *Mr. Pryn*, *Mr. Serjeant Charleton*, *Mr. Solicitor-general*, *Serjeant Maynard*, *Dr. Birkenhead*, *Mr. Thurland*, *Mr. Smyth*, *Mr. Vaughan*, and *Mr. Clifford*, or any three

three of them, to peruse the seditious infamous libel by him contrived, and draw up an impeachment against him, and report it to the house at their next meeting.

21 *Octobris*, 1678.

*Ordered,*

That a Committee be appointed to examine concerning the murder of Sir *Edmundbury Godfrey*, and to enquire into the manner and means how he came by his death; and likewise to enquire into the particulars of the plot and conspiracy, mentioned in his Majesty's speech, against his person and government; which Committee was impowered to send for persons, papers, and records.

*Ordered,*

That an address be made to his Majesty, by such members of this House as are of his Majesty's privy-council, humbly to desire his Majesty, that all papers which do relate to the plot and conspiracy, mentioned in his Majesty's speech, against his person and government, may be communicated to the said Committee.

23 *Octobris*, 1678.

*Resolved, &c.*

That the matter concerning the plot and conspiracy, mentioned in his Majesty's speech, against his person and government, be heard at the bar of the house.

*Ordered,*

That Mr. *Michael Godfrey* be forthwith sent for, to attend with the papers and examinations, taken by Sir *Edmundbury Godfrey*, and now remaining in his custody

custody sealed up, touching the plot and conspiracy mentioned in his Majesty's speech.

24 *Octobris*, 1678.

The papers of examinations taken by Sir *Edmund-bury Godfrey*, touching the plot and conspiracy, mentioned in his Majesty's speech, which were delivered in by Mr. *Michael Godfrey*, were opened, and by Mr. Speaker read to the house.

*Ordered*,

That the chairman of the Committee, appointed to examine concerning the murder of Sir *Edmund-bury Godfrey*, do take into his custody the papers of examinations, taken by Sir *Edmund-bury Godfrey*, concerning the plot, mentioned in his Majesty speech.

*Ordered*,

That Mr. *White* alias *Whitebread*, and Mr. *Micho*, be removed from the house where they are now, to *Newgate*, in case they be in a condition fit to be removed.

25 *Octobris*, 1678.

Mr. Speaker acquaints the house, that in pursuance of the order of the house yesterday, he had waited upon his Majesty, and acquainted him with the informations the house had yesterday received, and that his Majesty was pleased to acknowledge the great care of this house, in the preservation of his person and government; and that his Majesty was informed, that Mr. *White* alias *Whitebread*, and Mr. *Micho*, were at present very sick, but that his Majesty would send to see them; and if they were in a condition fit to be removed, they should be forthwith sent to *Newgate*.

*Ordered*,

*Ordered,*

That the members of this house, who are Justices of the peace for the county of *Middlesex*, do repair to the lodgings of Mr. *White* alias *Whitebread*, and Mr. *Micho*, and take their examinations touching the plot and conspiracy mentioned in his Majesty's speech, against his person and government; and do issue out their warrants for searching their lodgings, and seizing all such papers and writings relating thereto, as shall be there found.

25 *Octobris*, 1678, *post meridiem*.

*Ordered,*

That the Secretaries be desired to move the King, that the keys of Mr. *Langborn's* chamber may be delivered by the messengers, in whose hands the same are, to the Committee appointed by the house to search Mr. *Langborn's* papers and writings.

26 *Octobris*, 1678.

*Ordered,*

That an humble address be made to his Majesty, by such members of this house as are of his Majesty's most honourable Privy-Council, to desire his Majesty, that Mr. *Coleman's* papers, and all other papers relating to the plot and conspiracy, mentioned by his Majesty in his speech, may be communicated to the house.

Mr. Secretary *Williamson* informs the house, that in pursuance of the order of yesterday, he had attended his Majesty, and acquainted him with the desires of this house, that a Committee of this house might have leave to search Mr. *Langborn's* papers; and that his Majesty was pleased to give leave that the same may be searched, and had appointed two of the clerks of the council to assist the Committee therein:



therein : And that his Majesty was pleased to deliver him some of Mr. *Coleman's* papers sealed up, and ordered him to deliver the same to the house ; and had also commanded him to acquaint the house, that the rest of Mr. *Coleman's* papers were at present under examination before the House of Lords ; and that so soon as the Lords had done with them, they should be communicated to this house : And the papers were accordingly, by Mr. Secretary *Williamson*, delivered in, sealed up.

29 *Octobris*, 1678.

*Ordered,*

That his Majesty be humbly desired by such members of this house, as are of his Majesty's most honourable Privy-Council, that an inventory, or list of all Mr. *Coleman's* papers, which have been sorted by the clerks of the council, may be communicated to this house ; and that all those papers which are not sorted, may be delivered over to a Committee of this house.

*Ordered,*

That a Committee be appointed to examine Mr. *Coleman*, touching the plot and conspiracy mentioned in his Majesty's speech.

31 *Octobris*, 1678.

This house being informed that the clerk of the council was attending without, with Mr. *Coleman's* papers :

*Ordered,*

That the papers be delivered to the clerk of the house, and by him transmitted to the Committee appointed to examine the same.

2 *Novem.*

2 *Novembris*, 1678.

*Ordered,*

That the clerk of the council now in waiting, do forthwith attend with Mr. *Harcourt's* papers and writings; and that all other papers and writings relating to the plot mentioned in his Majesty's speech, either in the hands of the Secretaries of state, or in the hands of the clerks of the council, be forthwith communicated to this house, according to the leave graciously given by his Majesty.

22 *Novembris*, 1678.

*Resolved,*

That an humble address be made to his Majesty, by such members of this house as are of his Majesty's Privy-council, to desire his Majesty, that such letters and papers which relate to the plot now under examination, as have not been perused by this house, may be communicated to them.

29 *Novembris*, 1678.

A message from the Lords by Sir *John Coel*, and Sir *Samuel Clark*.

Mr. *Speaker*,

The Lords have received information, that there is a faculty under the seal of Cardinal *Barberini*, for dispensing with the taking of the oaths, and other things, in the hands of a member of this house, which their Lordships desire may be communicated to them.

Sir *John Knight* acquaints the house, that the paper mentioned by the Lords was found among Mr. *Ireland's*

land's papers, and he delivered the same in at the clerk's table; which being read by Mr. Speaker,

*Ordered,*

That the said paper be sent to the Lords, and that Mr. Speaker do acquaint the messengers, that when their Lordships have perused the same, this house does expect it should be returned again, in order to be entered in the journal of this house: And the messengers being called in, the said paper was delivered to them, and Mr. Speaker acquainted them with the pleasure of the house.

26 Aprilis, 1679.

*Resolved,*

That an humble address be made to his Majesty, to desire his Majesty to give order for the executing of *Pickering*; and also to give order to the Judges, to issue out their warrants for executing the several popish priests, which they have condemned in their several circuits.

5 Maii, 1679.

The Lord *Russel* acquaints the house, that his Majesty had commanded him to let the house know, that his Majesty is willing to comply with the request made to him by this house, concerning *Pickering*, and that the law shall pass upon him accordingly.

As to the condemned priests, the House of Peers have sent for them, in order, as his Majesty conceives to some examinations.

9 Maii, 1679, post meridiem.

Mr. *Hampden* reports from the Committee appointed to inspect the Lords journals, and see, *inter alia*,

*alia*, upon what grounds the condemned popish priests are sent for, that the Committee had inspected the journals, and taken out copies of their proceedings, which he reported to the house.

20 *Maii*, 1679.

*Ordered,*

That a message be sent to the Lords concerning the condemned popish priests, sent for up to *London* from the several county goals, by order of their Lordships.

22 *Maii*, 1679.

Sir *William Franklyn* reports from the Committee appointed to draw up and prepare a message to be sent to the Lords, concerning the popish priests condemned in the circuits, that the Committee had agreed upon a message to be reported to the house, which he read in his place, and afterwards delivered the same in at the clerk's table, where the same was twice read, and upon the question, agreed, and is as followeth, (*viz.*)

The House of Commons having made an humble address to his Majesty, that he would be pleased to give order to the Judges, to issue out their warrants for the executing the several popish priests condemned in the several circuits; and his Majesty having been graciously pleased to signify to the House of Commons, that your Lordships have sent for them, in order (as he conceived) to some examination: And the House of Commons being also informed, that the said priests have, by order from your Lordships, not only been brought out of the several counties, where they were condemned, but continued yet in *Newgate*, and other prisons, in or about the cities of *London* and *Westminster*, by reason whereof the execution of the sentence pronounced upon them

is



is still delayed, do desire of your Lordships, that the said priests may be forthwith remanded to the several counties where they were condemned, that so they may be executed, according to the judgments passed upon them.

25 Octobris, 1 Will. & Mariae.

The house being informed, that several of the prisoners of the *Tower*, were now bailing in the court of *King's-Bench*, being brought thither by the Governor of the *Tower*, by vertue of a *Habeas Corpus* awarded for that purpose, particularly Sir *Thomas Jenner*, Mr. *Richard Graham*, and Mr. *Philip Burton*.

Ordered,

That Sir *Thomas Jenner*, Mr. *Richard Graham*, and Mr. *Philip Burton*, be immediately brought to this house by the Governor of the *Tower*, to answer to such matters as shall be objected against them.

And Mr. Speaker issued his warrant accordingly, and the same was sent by the Serjeant at Arms attending this house.

Afterwards, the Serjeant acquainted the house, that Sir *Thomas Jenner* was bailed, and gone out of court, and that Mr. *Graham* was bailing in the court; and that notwithstanding he had delivered the warrant to the Governor of the *Tower*, and that he was coming with Mr. *Graham*, and Mr. *Burton*.

Ordered,

That Sir *Thomas Jenner* be sent for in custody of the Serjeant at Arms attending this house, to answer to such matters as shall be objected against him.

The house being informed, that Mr. *Burton* and Mr. *Graham* were at the door, they were severally called in to the bar of the house, and charged with

the several matters mentioned in the said report, and heard what they could say touching the same.

And being withdrawn,

*Ordered,*

That Mr. *Richard Graham*, and Mr. *Philip Burton*, be committed to the custody of the Serjeant at arms attending this house, for several high crimes and misdemeanors objected against them.

*Resolved,*

That a Committee be appointed to examine witnesses against Mr. *Graham* and Mr. *Burton*, and to prepare a charge against them.

And it is referred to, &c.

4 Januarii, 1697.

The house being informed, that \* Mr. *Reginald Marriot* had sent to several members of this house, letters, acknowledging that he had been concerned in the irregular indorsement of *Exchequer* bills; and therein offered fully to relate how that notorious practice had been projected and carried on, and in what manner he had been drawn into the same.

*Ordered,*

That the said Mr. *Reginald Marriot* be summoned to attend this house immediately, and the said Mr. *Marriot* attending accordingly, he was brought in by the Serjeant at Arms attending this house to the bar, where he delivered an account of his knowledge of that matter in writing, signed by himself, which he read at the bar, and afterwards delivered into the house.

\* Mr. *Reginald Marriot* was under prosecution, by order of the Lords Commissioners of the Treasury, and was under bail.

*Ordered,*

That the examinations taken before the Lords of the treasury, relating to the irregular indorsement of the *Exchequer* bills, be laid before this house.

A motion being made, that the house will order, that all prosecutions at law against the said Mr. *Marriot*, be stayed during the pleasure of the house ;

And a debate arising thereupon :

*Resolved,*

That the debate be adjourned till to-morrow morning.

*Ordered,*

That the said Mr. *Marriot* be taken into custody of the Serjeant at Arms attending this house ; and that no person be permitted to converse with, or bring any letters to him, without leave of the house.

5 *Januarii*, 1697.

Mr. *Lowndes*, according to order, presented to the house several papers, relating to the examinations, taken before the Lords of the treasury, touching the false indorsement of the *Exchequer* bills.

The house resumed the adjourned debate of yesterday, touching the ordering the stay of any prosecution at law against Mr. *Marriot*.

*Ordered, nemine contradicente,*

That all prosecutions at law against Mr. *Reginald Marriot*, in relation to the false indorsement of *Exchequer* bills, be stayed, during the pleasure of this house.

But nothing more was done in this business.

P R O.

## PROCEEDINGS

I N T H E

Houses of LORDS and COMMONS,

CONCERNING THE

*Occasional Conformity Bill.*

ON the 25th of *November*, a motion was made in the House of Commons, for bringing in the bill against occasional conformity: Great opposition was made to it; the court was against it, but it was carried by a great majority, that such a bill should be brought in. So a new draught was formed. In it the preamble, that was in the former bill, was left out. The number, besides the family, that made a conventicle, was enlarged from five to twelve: And the fine set on those who went to conventicles, after they had received the sacrament, besides the loss of their employment, was brought down to fifty pound: These were artifices, by which it was hoped, upon such softnings, once to carry the bill on any terms: And when that point was gained, it would be easy afterwards to carry other bills of greater severity. There was now such a division upon this matter, that it was fairly debated in the House of Commons: Whereas before, it went there with such a torrent, that no opposition to it could be hearkened to. When it went up to the Lords, it occasioned one debate of many hours, whether the bill should be entertained and read a second time, or be thrown out. The Prince ap-



peared no more for it, nor did he come to the house on this occasion: Some who had voted for it in the former session, kept out of the house, and others owned they saw farther into the design of the bill, and so voted against it. Upon a division it was carried, by a majority of twelve, not to give it a second reading, but to reject it. The following speech was made by a member of the House of Commons, on that occasion, and seems to contain the sense of the majority of that house.

Mr. Speaker,

Speech in  
the house  
of Com-  
mons, for  
the bill  
against Oc-  
casional  
Conformity.

‘ **H**ER Majesty has been pleased in all her  
‘ speeches, to give us so many assurances of  
‘ supporting the Church of *England* as by law esta-  
‘ blished; and also such instances of being punctual  
‘ to her promise in this particular, that I think she  
‘ very justly deserves the title of *Defender of the Faith*.  
‘ Her desire to see this bill succeed the last sessions  
‘ of Parliament, was sufficiently shewn by the  
‘ Prince of *Denmark*’s constant attendance upon  
‘ it; and I believe the reason why some persons  
‘ opposed it, was because the Queen seemed to  
‘ espouse it.

‘ But pray, Gentlemen, let us consider, how this  
‘ bill came to be lost? Why, two or three noble  
‘ Lords were by turns to be absent? The miscar-  
‘ riage of the bill was imputed to their want of at-  
‘ tendance, when at the same time they were desired  
‘ to be out of the way. And is it not a shame, that  
‘ we, who have given fourscore millions of money  
‘ for the preservation of the protestant religion,  
‘ should have *trimming* at last in a bill to prevent  
‘ *hypocrisy*?

‘ It was a law among the *Athenians*, that when any  
‘ mutiny or difference arose in the city of *Athens*,  
‘ the inhabitants should take one side or other, or  
‘ else they banish them the city: And truly, Sir,  
‘ when members of Parliament, and Ministers of

' State stand neuter, in matters that nearly concern  
 ' the interest of the church of *England*, and have not  
 ' courage to own their opinion, I think they very  
 ' well deserve to be turned out. Every \* Gentleman \*  
 ' here is sent up to give his vote, and when he de-  
 ' clines that, he cannot be properly said to serve the  
 ' place he represents. This I take to be the worst  
 ' sort of cowardise.

\* Designed against such as withdrew into the Speaker's chamber, when the question was put for passing the bill.  
 ' But pray, Sir, let us enquire into the meaning of  
 ' all this *trimming*. Are we afraid to disoblige a par-  
 ' ty of men, that are against the church and govern-  
 ' ment? Whose principle of hatred and malice to the  
 ' family of the *Stuarts* descends to them by inheri-  
 ' tance? Men, Sir, that offered open violence to her  
 ' Majesty's royal grandfather; men that have not on-  
 ' ly the impudence at this time to justify that fact,  
 ' but to turn the day of his murder into ridicule, and  
 ' keep a *calves-head-feast in the city*. And can we  
 ' imagine that those who are enemies to her Ma-  
 ' jesty's person and office, and that were for hin-  
 ' dering her from coming to the throne, would  
 ' not be glad of any opportunity to shove her out  
 ' of it?

' Are these the men to be countenanced and en-  
 ' couraged? This, in plain *English*, makes me  
 ' believe this Ministry has too great a resemblance  
 ' of the last; that my Lord *S—d* is risen from  
 ' the dead, and now become Prime Minister of  
 ' State.

' And now I am upon this subject, give me leave  
 ' to tell some Gentlemen here, who have been bel-  
 ' lowing and roaring against persons for taking places  
 ' in the late reign, that it is a reflection upon them  
 ' to hold and continue their places, in the company  
 ' of those that they have been exclaiming against.

' They may remember, if they please to recollect  
 ' the language in the late reign—*Sir, you must*  
 ' *turn this Gentleman out, or else I cannot serve you.*—

' And if any Gentleman was in the interest of the

‘ church of *England*, ’twas a sufficient exception  
 ‘ against his being employed. No Gentleman of  
 ‘ that principle was then thought fit to be a Deputy-  
 ‘ Lieutenant, or a Justice of the Peace. If we  
 ‘ would take the same resolution, and the same  
 ‘ spirit, things might be better managed than they  
 ‘ are.

‘ I did wonder to hear so many B——s against  
 ‘ this bill, but that wonder ceased, when I consider-  
 ‘ ed whom they owed their preferment to. The A.  
 ‘ B——p of C——y, I think was promoted to  
 ‘ that see by my Lord S——d’s interest; and being  
 ‘ asked what reasons he had against this bill, replied,  
 ‘ *He had not well considered the bill, but that my Lord*  
 ‘ *S——r told him it ought not to pass.*—— This was a  
 ‘ very weighty reason for the head of our C——h  
 ‘ to give; and yet, I dare say, none of the rest of  
 ‘ them could give a better. One would be provok-  
 ‘ ed by the late behaviour of the B——s, to move  
 ‘ for leave to bring in a bill for the toleration of  
 ‘ Ep——cy; for, since they are of the same prin-  
 ‘ ciples with the dissenters, it is but just, I think,  
 ‘ that they should stand on the same foot.

‘ Now, Sir, give me leave to answer some objec-  
 ‘ tions made against this bill. The first is, that *it is*  
 ‘ *unseasonable at this time.* Why unseasonable? Is  
 ‘ it not as seasonable for us to pass a law, for the fur-  
 ‘ ther defence of the church of *England* here, as it  
 ‘ was for *Scotland* to pass an act last sessions for the  
 ‘ security of the kirk there? Why unseasonable?  
 ‘ does the success of our arms abroad, or the levy-  
 ‘ ing money at home depend upon it? No Gentle-  
 ‘ man can say, that either of them do; and since  
 ‘ there can be no objection made against the good-  
 ‘ ness of the bill, why should we defer the putting it  
 ‘ in execution?

‘ Another argument against this bill, is, that *it will*  
 ‘ *create division.* Are we to allow a schism to avoid  
 ‘ division? The dissenters hold it lawful to com-  
 ‘ municate

‘municate sometimes, and if so, why unlawful to  
 ‘communicate at other times? But oh! The fear of  
 ‘offending dissenters is to be urged as an argument,  
 ‘and not provoking the church of *England*: Either  
 ‘the ministry must think we are so good natured, as  
 ‘not to be displeased at any thing they do, or else  
 ‘that our number is so inconsiderable, that they do  
 ‘not value it if we are displeased.

‘Another argument against this bill proceeds from  
 ‘the number and strength of the dissenters. This I  
 ‘take to be an excellent argument for the bill; for  
 ‘if they are so strong and numerous, it is high time  
 ‘for us to guard our selves against them, and I appeal  
 ‘to every Gentleman here, whether one dissenter in  
 ‘place, is not capable of doing more mischief to the  
 ‘church of *England*, than ten out of it? Suppose,  
 ‘Mr. *Speaker*, the dissenters had the power in their  
 ‘hands (as they will certainly in a short time, if not  
 ‘restrained) would they admit the church of *Eng-*  
 ‘land into places of trust, and into the legislature,  
 ‘upon occasional conformity?

‘Her Majesty has been so generous as to offer  
 ‘what further security they think fit for the religion  
 ‘in *Scotland*; how comes it, that some Gentlemen  
 ‘should represent her Majesty so much concerned to  
 ‘preserve a religion she is not of, and so unwill-  
 ‘ling to grant a security for the church in which  
 ‘she expects to be saved; according to this method,  
 ‘one might expect the *Scotch* covenant to be brought  
 ‘again into *England*, and that the presbyterian par-  
 ‘ty of that kingdom, should remonstrate (as they  
 ‘did to her royal grandfather) the necessity of  
 ‘having one religion, and one worship in both  
 ‘kingdoms.

‘We have been under great expences in keeping  
 ‘these Gentlemen out, and have been traduced as  
 ‘persons designing a *French* government; and all  
 ‘the return we are like to have for our services and  
 ‘sufferings, in our purses and reputations, is, that



‘ these persons are like at last to become our masters,  
 ‘ which is a very great discouragement.

‘ Mr. *Speaker*, I take this practice of occasional  
 ‘ conformity, to elude the force of one of the best  
 ‘ laws made in the church of *England*’s defence, that  
 ‘ it is scandalous and knavish in it self, and I will pre-  
 ‘ tend to foretel this, that by the benefit of this oc-  
 ‘ casional conformity, the dissenters will come to  
 ‘ be the majority of this house, and then I will ven-  
 ‘ ture to pronounce the days of the church of *Eng-*  
 ‘ *land* few. That I may not see such dismal effects  
 ‘ of our pretended moderation, I heartily wish suc-  
 ‘ cess to this bill.

On occasion of the first reading of the bill in the  
 House of Lords, a learned and illustrious Prelate  
 made the following admirable speech, in opposi-  
 tion to it.

‘ *My Lords,*

The B---p  
 of S---m’s  
 Speech a-  
 gainst the  
 bill.

‘ I Am very glad to find, that how much heat soever  
 ‘ this matter has raised abroad, yet none of that  
 ‘ has appeared in all this debate : If a heat of zeal has  
 ‘ appeared in some, yet nothing has been mixed with  
 ‘ it unbecoming the dignity of this house, and the  
 ‘ solemnity of a great council: It is a disadvantage,  
 ‘ especially to one of this *Bench*, to speak against any  
 ‘ thing, that, in the sound, and first appearance,  
 ‘ seems to be intended for the service of the church;  
 ‘ and I am sure, if I were not fully convinced that it  
 ‘ is not so, but that, how well soever it may be in-  
 ‘ tended by some, the effects of it will be quite con-  
 ‘ trary, I could not have a heart, or a face to *speak*  
 ‘ *against it*, but should *promote* it with all possible  
 ‘ zeal.

‘ I confess I am already bound up, as to this parti-  
 ‘ cular, and determined by a promise solemnly made  
 ‘ to the Queen. Her Majesty recommended *union*  
 ‘ to us, with a *particular vehemence of style*, when she  
 ‘ said,

' said, *she wanted words to express how earnestly she desired to see union, and a good agreement among her subjects.* I am sure we must all want words to express a due sense of that royal tenderness and care of us. In our address to her Majesty we promised, not *only to avoid, but to oppose every thing that might tend to create disunion and disorder:* And I do freely own, that I had then this very thing in my thoughts, as I believe a great many others had, and therefore I look on my self as under an obligation now to perform what I then promised.

' I know some of our order, as well as my self in particular, have been very *indecently*, and I hope very *unjustly* too, treated in many printed *libels* upon this very account; as if we were the enemies to the church, because we cannot think this bill for its service. The station we are in, sets us above the answering every spiteful writer. But next to the Queen, we owe it to your Lordships to satisfy you, if any thing sticks with you. We hope we may appeal to the world, and to our diocesses in every particular, whether our labours do not shew a true zeal for the church in all its concerns? We are the *disciples of the cross*, and must go through *good report*, and *ill report*, but we hope we are so well known, and have acted so long in a publick scene, and have acted such a part on it, that we may reckon our selves above such calumnies.

' Even *St. Paul* said, he became a fool in *glorying*, but it was when others compelled him to it: We must freely own that there have been such severities among us in every reign, since the reformation, that these are blemishes not easily wiped off. The *Burnings* in *King Edward's* reign is the reproach of that time. The capital proceedings in *Queen Elizabeth's* reign, and the severe act of the 25th year of it, that punishes meetings with imprisonment, banishment and death, is a blemish even on  
' that

‘ that long and glorious reign. The repeal of that  
 ‘ act past in both houses, *and it is known by what ma-*  
 ‘ *nagement it was, that it was not tendered to the royal*  
 ‘ *assent.* The mention of Queen *Elizabeth’s* reign leads  
 ‘ me to take notice of what has been said in relation  
 ‘ to the maxims, by which she governed her self, as  
 ‘ if she had been inflexibly steady in the observation  
 ‘ of the laws in matters of religion. It is certain,  
 ‘ that she treated the *Papists* all along with very par-  
 ‘ ticular indulgence: She would have the Peers ex-  
 ‘ cused from the obligation to take the oath of su-  
 ‘ premacy; she employed *Papists* in all her affairs;  
 ‘ they were Privy-Councillors, and Lord-Lieutenants,  
 ‘ her Lord Treasurer protested against all acts for the  
 ‘ reformation, and was known to be a church *Papist*,  
 ‘ or an *occasional Conformist*; and yet he continued in  
 ‘ that great post 14 years till he died; she encourag-  
 ‘ ed the *occasional conformity* of *Papists*, and appre-  
 ‘ hended no danger in that, even from them; and  
 ‘ yet, I hope, it will be acknowledged that there was  
 ‘ more reason to be afraid of them, considering both  
 ‘ their numbers, and the hopes of a *popish* successor,  
 ‘ than we have now to be afraid of the *Dissenters*.  
 ‘ She encouraged *occasional conformity*, and no body  
 ‘ was uneasy at it; but the *Pope* saw what it was like  
 ‘ to end in, and therefore he took care to put a stop  
 ‘ to it.

\* The E. of  
Clarendon.

‘ The severities in King *James’s* reign cast a blot  
 ‘ on it; and the proceedings in the *Star-Chamber*, and  
 ‘ the *High-Commission*, are set forth by a noble \* *histo-*  
 ‘ *rian*, as things that did not a little contribute to bring  
 ‘ on us the miseries of a civil war. The proceedings in  
 ‘ King *Charles* the II<sup>d</sup>’s reign were severe, and set on  
 ‘ with bad designs. That in a time both of war,  
 ‘ and of a plague, such an act as the *Five-mile-act*  
 ‘ should have past, will amaze all that do know the  
 ‘ secret of that time. Soon after the restoration, it  
 ‘ had been a very easy thing to have made up all dif-  
 ‘ ferences among us, but the design was to inflame  
 them ;

' them; and that matter was far driven as we all  
 ' know. The Earl of *Bristol* called together a meet-  
 ' ing of the chief of the *Papists*, and tendered them  
 ' an oath of secrecy, as the Lord *Stafford* told me  
 ' in the *Tower*, and told it likewise at the bar of the  
 ' house; he then told them, that the breach between  
 ' the *Church* and the *Dissenters* was now fixed, and  
 ' would be carried further; it was therefore their in-  
 ' terest to make use of all the *provocations* the dissen-  
 ' ters might meet with, and to offer their assistance  
 ' to them, in order to the engaging them to petition  
 ' for a *general toleration*: Yet they could never be  
 ' brought to it. When the declaration for a general  
 ' toleration, in 1672, was questioned in Parliament,  
 ' which brought on the act of the *Test*, set forth in the  
 ' preamble of this bill, the Lord *Clifford* got some to  
 ' move in favour of the *Dissenters*, hoping that would  
 ' have provoked either the one side or the other, and  
 ' that either the church party might be offended, with  
 ' the motion, or the *Dissenters*, with the refusing it.  
 ' That was stopt by Alderman *Love*, who desired, tho'  
 ' his own persuasion was well known, that nothing  
 ' with relation to them might intervene to stop the se-  
 ' curity, that the nation, and the *protestant* religion  
 ' would have by that act; in this he was seconded  
 ' by most of that party, so that the act was obtained  
 ' in some measure, by their assistance, and therefore  
 ' it would be hard to turn it against them; for the  
 ' King was then highly offended with them, for the  
 ' giving up his declaration. This wrought so much  
 ' on that house, that was so zealous for the church,  
 ' that they ordered a bill to be brought in for the ease  
 ' of *Protestant Dissenters*, in which little progress was  
 ' indeed made, yet to the end of that Parliament, the  
 ' conventicles were held very publicly, and they  
 ' never passed a vote, or made an address against  
 ' them. In the end of King *Charles's* reign we all  
 ' remember, that a new prosecution of them was set  
 ' on foot, and even then when the severities against  
 ' them



‘ them were very hard, they were solicited by the  
 ‘ agents of the court to petition for a *general tolera-*  
 ‘ *tion*, but they could not be prevailed on. What  
 ‘ some of them did in King *James’s* reign is well  
 ‘ known, and cannot be excused. By all this we see,  
 ‘ that the whole management with relation to dis-  
 ‘ senters, was an artifice to advance a *popish* interest,  
 ‘ which must needs give a just jealousy of every thing  
 ‘ that looks that way. After the late King had deliver-  
 ‘ ed us from all our fears and dangers, to whom (*let*  
 ‘ *ungrateful and malicious men treat his memory as they*  
 ‘ *please*) we owe our present happiness, and that we  
 ‘ are now sitting here, his next care was to secure the  
 ‘ church of *England* by the act of *toleration*, which  
 ‘ has not only set the *Dissenters* at ease, but has made  
 ‘ the church both stronger and safer, since God has  
 ‘ so blessed our labours, that we see the *Dissenters* lose  
 ‘ as much strength as we gain by it. The heat raised  
 ‘ by those dissensions is much allayed, and their num-  
 ‘ bers are abated by a moderate computation at least  
 ‘ a fourth part, if not a third. But now they are  
 ‘ alarmed and begin to put on more zeal, for they  
 ‘ apprehend the *toleration* is aimed at, and that how  
 ‘ little soever seems to be in this bill, it is a step, and  
 ‘ will be followed by more, that are kept in reserve  
 ‘ till this point is once gained. The next step may be  
 ‘ for their wives and children, and so the matter may be  
 ‘ carried on till the whole toleration is broke through.  
 ‘ If one picks at a great dyke that keeps out the sea,  
 ‘ it will be thought, how small a breach soever he  
 ‘ makes at first, that he designs a total inundation.  
 ‘ This seems to weaken and shake the toleration, so  
 ‘ men will grow jealous, and be on their guard, and  
 ‘ by this means we of the church shall not have so  
 ‘ free and unexcepted an access to work on their rea-  
 ‘ sons, which we now do with so much success, when  
 ‘ once their passions are kindled against us. The pre-  
 ‘ sent state of our affairs makes this yet more unsea-  
 ‘ sonable. It is a common maxim, followed even by  
 ‘ persecutors

persecutors, to keep things quiet at home, when Nations are engaged in war; especially in such a war as this, which is *for universal monarchy*, where *all is at stake*. There may happen great accidents in war, and it is no way advisable to raise discontents or apprehensions in great numbers at home, which may come to have very ill effects, when we are in no good condition to deal with them.

I know somewhat of *foreign affairs*: During the first six or seven years of the last reign, it was the common topick of the agents of *France*, in the courts of our Allies, that *England* was so dis-jointed by factions at home, that there was no trusting to it; no doubt the same arts are now practised. *Portugal* and *Savoy* are two Allies of the greatest consequence to us, who have no strength to resist the force that will be poured in upon them, but as they hope to be supported by the treasure, the fleet, and the assistance of *England*. Any thing that divides and weakens us must give them a melancholy prospect, and may make very dangerous impressions on them; whereas our *union* at home, and the maintaining the happy calm the nation is now in, will encline them to depend more firmly on our treaties with them.

Some things give a just suspicion, when the men who promote them, and write for them without doors, are the known and avowed enemies of the government, who deny the Queen's title, and are looking to one beyond Sea. Can we think that those who separate from our churches, and have raised a schism in it, can be zealous for the peace and order of the church? They are zealous for somewhat else, and therefore we may well believe their zeal in this particular, is with a view to that to which they are driving. One author, who has writ two books in behalf of this bill, is known to be the *furiosest Jacobite* in *England*, and does not conceal it,

even

‘ even in those books. In one of these he says, *He is*  
 ‘ *one called an high churchman.* These are new terms  
 ‘ of distinction, raised on design to distract us yet  
 ‘ more. I know no *high church*, but the church of  
 ‘ *Rome*; and that author *L—* has in another book  
 ‘ shewed us, how near he comes to that church, when  
 ‘ he proposes, *That a treaty may be set on foot between*  
 ‘ *our Convocation, and the Assembly of the Clergy of*  
 ‘ *France; and that we should abate the Regal Supre-*  
 ‘ *macy, and they the Papal,* and then, he fancies, all  
 ‘ other matters could be easily adjusted: So here we  
 ‘ see who are to be called *high church*. Our legal esta-  
 ‘ blishment founded upon primitive pattern, is the  
 ‘ true measure of our *church*; and those who *rise above*  
 ‘ *it*, are as much out of the way, as those *who fall be-*  
 ‘ *low it.* But I knew one of the eminentest *Papists* of  
 ‘ the age, who used often to say, *He was for the church*  
 ‘ *of England as by law established;* I took the liberty  
 ‘ to ask him how such a profession did agree with  
 ‘ his sincerity? He answered, *He looked upon the laws*  
 ‘ *of Queen Mary as yet in full force, for he thought Queen*  
 ‘ *Elizabeth, who repealed them, had no more right to*  
 ‘ *the Crown than Oliver Cromwell had, so that her*  
 ‘ *laws were no laws.* I confess, ever since that time,  
 ‘ I have been jealous when I hear some persons pre-  
 ‘ tend so much zeal for the church of *England.* The  
 ‘ fury with which this matter is driven, does height-  
 ‘ en the jealousy. What great matters could this  
 ‘ bill produce, if there were not somewhat under  
 ‘ it?

‘ How comes it that our *Bench* should be inde-  
 ‘ cently treated, because we cannot all of us think  
 ‘ it seasonable, and do not apprehend that we need  
 ‘ it? We have in the whole course of our lives ad-  
 ‘ hered to the interest of the church at all perils, and  
 ‘ in all times, without ever once in any particular  
 ‘ leaning to the *Dissenters*: And yet we, who have  
 ‘ been our whole life long, by our labours and wri-  
 ‘ tings,

' tings, *building up the church*, must now be defamed  
 ' as the underminers, because we cannot comply  
 ' with other men's notions. The *head of our \* order* Archbishop of Canterbury.  
 ' is misrepresented with as much injustice as virulence,  
 ' tho' he stood as in the front of the *church* in the  
 ' most dangerous times; and false stories are made,  
 ' and publickly reported of him. I love not to use  
 ' harder words, but this could be the better born,  
 ' if it were not for the relations and dependencies of  
 ' those who vent 'em. I my self have met with a  
 ' larger share of such treatment, though in no step  
 ' or part of my life, I ever gave the least occasi-  
 ' on for it. When I *wrote the history of the reforma-*  
 ' *tion*, for which I had the thanks of this house, I  
 ' was then under no byass; I had neither favour  
 ' nor interest to tie me, so that I wrote purely what  
 ' was my own sense of things; and yet I took  
 ' care to mark all the first beginnings of *Non-*  
 ' *conformity*, all the grounds they went on, and all  
 ' the colours that imposed on them, and have shewed  
 ' the mistakes and weakness of every one of them,  
 ' with an honesty and zeal that ought to set me be-  
 ' yond suspicion. But I own I began the world on a  
 ' *principle of moderation*, which I have carried down  
 ' thro' my whole life, and in which I hope I shall  
 ' continue to my life's end. There was a time when  
 ' those who are now so furious, and perhaps so full of  
 ' hopes, needed my service, and I had some credit,  
 ' which for some years was chiefly employed in their  
 ' behalf. Your Lordships may remember with what  
 ' vehemence I pleaded, for excusing the deprived  
 ' Bishops from the oaths. Others were then, and  
 ' are now in great posts, who, I am confident, will  
 ' do me the justice to own, that I was the common  
 ' agent both for *Papists* and *Jacobites* in distress; for  
 ' which we are now so ill rewarded. But now to speak  
 ' to the title of the bill, *occasional conformity*, I cannot  
 ' in the general condemn this, but as it is accompa-  
 ' nied with error and mistake. For a particular in-  
 ' stance,



stance, I my self was an occasional conformist in  
 Geneva and Holland. I thought their churches  
 were irregularly formed, under great defects in their  
 constitution, yet I thought communion with them  
 was lawful, for their worship was not corrupted;  
 but at the same time I continued my communion  
 with our own church, according to the liturgy of  
 this church, with all that came about me. *And if*  
*the designs of some of the promoters of this bill,* should  
 be brought about, and I driven beyond sea, (*unless*  
*among other unpardonable people, I should be at first*  
*knocked on the head*) I, in that case, would commu-  
 nicate with the foreign churches, but would like-  
 wise gather all of this church about me, and still  
 continue to worship God, according to the liturgy,  
 to my life's end. So I think *Occasional Conformity*,  
 with a less perfect church, may well consist with  
 the continuing to worship God in a more perfect  
 one. It remains then a point of opinion which  
 church or society is the less perfect. In this I am  
 very sure our church is the more perfect and regular,  
 and that the separation is founded upon error and  
 mistake; and that true edification is among us,  
 and not among them; but some of them by un-  
 happy education, think otherwise, and in this  
 they are certainly to blame, as they are in every  
 part of the separation. But if it is intended to  
 tolerate them under their other mistakes, I do  
 not see why this should not be tolerated likewise,  
 since it is much less dangerous than the other  
 practices, which are not at present complained  
 of.

The noble historian, whom ye are now all read-  
 ing with much pleasure, finds great fault with those  
 who did not go to the *French* churches, even where  
 they had an Ambassador's chappel to resort to, tho'  
 this was certainly an *Occasional Conformity* with a  
 less perfect church, where there was no obligation  
 to go to it; and when they had a more perfect  
 one

‘ one at hand. It has been a topick insisted on by  
 ‘ all who have writ against the *Dissenters*, from the  
 ‘ first beginning of the disputes down to the present  
 ‘ times; they have been always called on to come  
 ‘ as near the church as they could, and to do all that  
 ‘ they could do with a good conscience, and there-  
 ‘ fore before the wars, great difference was made  
 ‘ between the *Puritans* and the *Brownists* or *Sepa-*  
 ‘ *ratists*, on this very account: But now all that is  
 ‘ reversed; the *Separatists* are well lookt on, where-  
 ‘ as those who come much nearer us are discour-  
 ‘ aged, tho’ we all see, that this is a step, by which  
 ‘ many come over entirely to us, and the children  
 ‘ of others do enter into a constant communion with  
 ‘ us; and shall we go to cast a scandal on this to  
 ‘ discourage it?

‘ In my diocese, those who are *Occasional Confor-*  
 ‘ *mists* out of principle, who sometimes go to  
 ‘ church, and go sometimes to meetings, are without  
 ‘ number; who yet have no office, and seem to pre-  
 ‘ tend to none; I confess I do not desire to press it  
 ‘ too hard upon them, that they may not do both,  
 ‘ lest this instead of keeping them from meetings,  
 ‘ hinder them from coming to church. I have heard  
 ‘ but of one in office in my diocese, who goes to  
 ‘ meetings, and that is only to a weekly lecture.

‘ Therefore, since *Occasional Conformity* is only to  
 ‘ be blamed, when it goes upon an error and a mis-  
 ‘ taken principle, I do not see why it should be worse  
 ‘ treated than the errors that are now tolerated, for  
 ‘ it is of all the other errors, *that which has done*  
 ‘ *the greatest service to the church.*

‘ I now come to the bill itself: I miss a preamble  
 ‘ here, that was in the former bill, in favour of tole-  
 ‘ ration, which is now left out; I confess I don’t know  
 ‘ how it came to be there, for it did not very well  
 ‘ agree with the bill, especially as it was first sent  
 ‘ up to us. It put me in mind of a clause in the sen-

' tence of the Inquisitors; when a Heretick is con-  
 ' demned, and delivered to the secular arm, they con-  
 ' jure the Magistrate by the mercies of God, and the  
 ' bowels of *Jefus Christ*, that no harm be done to the  
 ' obstinate Heretick, neither in life nor limb; but  
 ' all this is but *farce*, for he is to be burnt immediate-  
 ' ly: Yet after all, these words were a solemn decla-  
 ' ration, that could not have been forgot, if other  
 ' matters had been afterwards offered at: They are  
 ' now left out with great sincerity, no doubt, by those  
 ' who do not intend to maintain the toleration act;  
 ' a very honest part when they will not profess it! I  
 ' know it may be said, let us put in these words, and  
 ' stand to them. But still this will not lay the appre-  
 ' hensions, that the leaving out these words must raise,  
 ' as if the original design of this bill was to *strike at*  
 ' *the toleration*; and that therefore those who have  
 ' contrived it, would not limit themselves by words  
 ' of their own framing, so they may, to carry their  
 ' point, consent to their being put in by others, to  
 ' which they do only give way, which they will not  
 ' think to be such a tie on them, as if they had, of  
 ' one accord, put them in the first draught of the  
 ' bill. There are other words in the preamble, that  
 ' do not appear to me to be well grounded after the  
 ' two acts, the *corporation act* and the *test act* are set  
 ' forth. It is inferred, that it was intended, that all  
 ' men comprehended in them should be, and always  
 ' continue to be of the communion of the church of  
 ' *England*. By the first of these acts, no man could  
 ' bear office in a corporation, unless he had received  
 ' the sacrament within a year before; and by the  
 ' other, he who had a place of trust was to receive  
 ' the sacrament within three months after; so by  
 ' these acts, it is very true, that no man might be  
 ' in any employment, who either had not been, or  
 ' was not then in the communion of the church, but  
 ' there is not a clause, nor a word in either of these  
 ' acts

' acts, that imports, that he should always continue  
 ' to be so. If the clause once offered had been re-  
 ' ceived obliging such persons to come to church  
 ' once a month, and to receive the sacrament once a  
 ' year, then this intention should have been fairly de-  
 ' clared; but, as it is, since no such clause appears,  
 ' I don't see how in a recital we can affirm a  
 ' thing that has no foundation, for how unlimit-  
 ' ed soever our enacting power may be, yet in a re-  
 ' cital a thing must either be as it is set forth to be,  
 ' or all the authority on earth cannot make it to be  
 ' otherwise than it is. As for the enacting part,  
 ' when in a proper time a bill shall be brought in,  
 ' disabling all to hold any employment, but those  
 ' who continue to be in the communion of the church  
 ' of *England*, I shall concur in it heartily; but for a  
 ' fine of 50*l*. I cannot agree to it; that punishment  
 ' goes further than disabling; I cannot agree to any  
 ' such clause: Nor is it consistent with the act of to-  
 ' leration, to lay a heavy fine for going to a meeting  
 ' tolerated by law: Nor can I consent to the reck-  
 ' oning the *foreign churches tolerated among us*, which  
 ' are by name excepted in the act of *uniformity*,  
 ' among the meetings of the separatists from our  
 ' church. *This will have a strange sound all the world*  
 ' *over, and will be a mighty discouragement to all abroad*,  
 ' who expect deliverance and protection from hence,  
 ' when they understand that it is made so criminal a  
 ' thing to worship God with them, and according  
 ' to their way: For these reasons, I think this bill  
 ' ought not to be now entertained, but that the sub-  
 ' ject matter of the bill ought to be left to be con-  
 ' sidered at a proper time.

This Speech some would then have to have been  
 seconded by another, said to be spoke by the Lord

H—



Another  
Speech a-  
gainst it.

*My Lords,*

I Am very little personally concerned in this bill ;  
I have no office, I expect none, nor do I desire  
any ; and yet I pay as much duty to her Majesty,  
and wish as well to her government, as those that  
have half a dozen.

I shall not, *my Lords*, enter into the considera-  
tion of the justice or injustice of this bill, whether a  
man may be deprived of what he has a legal right  
to, without any forfeiture on his part ; tho', in my  
opinion, he may ; because private right is always  
to give place to publick safety ; and nothing else  
can justify one of the best bills that ever was made  
for the security of the Protestant religion, I mean  
the *test act* : But this is not the case here ; the per-  
sons affected by this bill are such as have always  
been serviceable to the government, and are some  
of the best friends to it.

Nor shall I trouble your Lordships to shew,  
that the great enemies of the state do not so much  
consider you as you are three different nations, but  
as you are an imbodyed people under one Sovereign.  
Neither does the church of *Rome* so much oppose  
you, as considered under the notion of church of  
*England*, occasional conformist, or dissenter ; but  
as you are part of the northern heresy, as you deny  
the supremacy, infallibility, and assert the idolatry  
of their church : They have no more affection for  
any one of these persuasions, than for another,  
and equally design the ruin of us all.

But, *my Lords*, that which I shall strictly speak  
to, is the point of time in which this bill visits  
you ; and, in my opinion, it could never have  
come in a more unseasonable and more dangerous  
juncture : I hope your Lordships will not think I  
wander from the subject of the debate, if I shew  
you a little the present posture of our affairs, as so  
many arguments, that at least will, I hope, justify  
me

‘ me for giving my vote against a second reading of this bill.

‘ First, *my Lords*, If we consider what a potent, what a vigilant adversary we have to struggle with, the *French King*, a Prince *whose designs are laid upon the greatest maturity of deliberation, carried on with the greatest secrecy, and executed with the greatest dispatch: There is no unsteadiness in his councils, his troops are never surprized, his designs are never betrayed, his attempts never disappointed by either the emulation, envy, or private piques of his great General: He can bring his armies sooner into the field, and keep them longer there than we can; nay, can do more with a small part, after we are gone into winter quarters, than we can with the main body of ours in a whole campaign, and that too, when they are commanded by a General that has retrieved the glory of the English nation.* Sure, *my Lords*, all heads, all hearts, all hands, are little enough against such an enemy.

‘ In the next place, *my Lords*, what heavy taxes lie upon us here at home, without any hope of ease, and very little expectation of advantage? The reason why men chearfully undergo such burthens, is because they expect some publick advantage by them, or at least that they may enjoy the remainder with security: But when they have no prospect from what is given, and are not secure of enjoying what is left, it will come very hard. We have, *my Lords*, given great sums the last year for the army; but what great matter have we done? For my own part, I think no man can reasonably expect more from what we are now raising this year, *than to meet again next winter, and give more, and so on.*

‘ And as to our *Navy*, what a vast and fruitless expence have we been at? I confess to your Lordships, when I consider these two heads, it puts me in

‘ mind of old *Jacob*’s prophecy of his son *Iffachar*,  
 ‘ in the 49th chapter of *Genesis*, *Iffachar is a strong*  
 ‘ *Ass* couching under two burdens, he bowed his shoul-  
 ‘ ders to bear, and became a servant to tribute. I be-  
 ‘ lieve this prophecy has been fulfilled elsewhere.

‘ Was there ever such an expedition undertaken as  
 ‘ that into the *Streights* last summer? I could never  
 ‘ yet meet with that man who could give a reasona-  
 ‘ ble account of it: Sure, no man will say that it was  
 ‘ to carry on your *trade*; that was to put the nation  
 ‘ to a million expence to carry out 3 or 400000 *l.*  
 ‘ and make a kind of necessity of as much more to  
 ‘ bring it home: Nor will any man, I think, own  
 ‘ that so great a force was sent thither to make the  
 ‘ *Italian Princes* declare for the Emperor, and then  
 ‘ leave them to the mercy of the *French*: ’Tis very  
 ‘ true, so vast a fleet plainly shew’d *how formidable a*  
 ‘ *power the Confederates were by sea*; but sure, it  
 ‘ shewed also *the weakness of our conduct*, that knew  
 ‘ *so little what to do with it*.

‘ But there is one thing, *my Lords*, that above all  
 ‘ amazes me: Every body knows, that the foundati-  
 ‘ on of all our expectations and designs of placing  
 ‘ the *house of Austria* on the Throne of *Spain*, is laid  
 ‘ on the assistance we expected from *Portugal*; we  
 ‘ know too by the manner of that Prince’s conduct  
 ‘ and treatment with us, that no Prince is governed  
 ‘ more by interest. Why then was not a greater  
 ‘ part of so vast a fleet left there to *countenance* or  
 ‘ *secure him*? Sure, ’tis unaccountable that he should  
 ‘ have any just cause to apprehend himself either *for-*  
 ‘ *gotten or neglected*. No man knows what difficul-  
 ‘ ties or delays may force him to.

‘ A noble Lord with a *white staff*, gave it as a rea-  
 ‘ son, *who, tho’ he was against the bringing in of this*  
 ‘ *bill, yet since it had passed another place, he was for*  
 ‘ *it*; because *the not passing of it now, he feared would*  
 ‘ *create a great disturbance in our affairs*; which I  
 ‘ take

' take to be a great reason against this bill: For  
' 'tis very well known the *leading part* of the nation  
' are most concerned in it; and if this bill should  
' pass, the sad effects of it would soon be found in  
' the *Exchequer*.

' Besides all this, *my Lords*, what great and irre-  
' parable losses have we had? The Parliament may  
' vote money, and money may build ships; *but 'tis*  
' *impossible to recover our seamen, nor is there any*  
' *encouragement to them, or nursery for them.*

' There is one thing more, *my Lords*, which I  
' will at present but name; because upon some other  
' occasion I intend to speak more of that point.  
' It may perhaps seem too big to be named, but I  
' shall never think any thing so, that may prove  
' dangerous to the crown or government: *It is the*  
' *extraordinary favour of one or two persons.* A  
' thing that has been very fatal to the royal family,  
' and what has been may be. I will only in short  
' say, when all the favour is bestowed upon one or  
' two persons, when all the power by sea and land  
' is either virtually or openly in one hand; when  
' all the offices, like a set of locks, are commanded  
' by one *Master Key*; I pray God it never again  
' prove fatal both to crown and country.

' Give me leave only to recapitulate and say, whe-  
' ther your Lordships consider the present posture  
' of our affairs, either at home or abroad, by sea or  
' land, in a court or camp, I can never think this a  
' proper time for such a bill.

However this was, several Peers spoke loud against  
the bill, particularly the Duke of D——re, the  
Earl of P——, the Lord M——n, the Lord  
Fer——s, and the Lord Wb——. The last of these  
to shew the unseasonableness of any thing that might  
seem to lead to persecution, took notice of the  
distracted state of *Scotland*, and of the insolence  
of the *papists* in *Ireland*; adding, they ought rather

Several other  
Lords speak  
against it.



The Bill  
rejected.

to imitate the Parliament of the latter kingdom, in their zeal against *popery*, than to frame laws to encrease their divisions here. And the Lord *M——n*, a Peer eminently conspicuous for his parts, and his affection to the protestant succession, did not stick to say, that *if they passed this bill, they had as good tack the pretended Prince of Wales to it*. Upon the whole matter, the bill, after a second reading, was rejected by a majority of 12 voices; but because there is some difference, especially in the preamble between this and the bill, the preceding year, it will not be improper to insert an abstract of it in this place.

An abstract  
of the Oc-  
casional  
Conformity  
Bill.

**W**Hereas by an act made in the 13th year of the reign of King *Charles* the Second, entituled, *An act for the well-governing and regulation of Corporations*, it is, among other things therein contained, enacted, that from and after the 24th day of *March*, 1663, no person or persons should for ever be placed, elected, or chosen in or to any Office or place of Mayor, Alderman, Recorder, Bailiff, Town-clerk, Common council-man, or any office or offices of Magistracy, or place, trust, or other employment relating to, or concerning the government of any city and corporation, within the Kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, who should not within one year next before such election or choice, have taken the sacrament of the Lord's Supper, according to the rites of the church of *England*; and in default thereof every such placing, election and choice, was thereby enacted and declared to be void.

*And whereas*, by another act made in the 25th year of the reign of the said King *Charles* the II<sup>d</sup>. entituled, *An act for preventing dangers which may happen from popish recusants*, it is enacted, among other things therein contained, that all persons, who should be admitted into any office, civil or military, after the first day of *Easter-Term*, in the year 1673, should

should receive the sacrament of the Lords Supper, according to the usage of the Church of *England*, within three months after their admittance, in some publick church, upon some Lord's Day; and that all persons, who should neglect or refuse to take the sacrament, as aforesaid, should be, *ipso facto*, adjudged incapable, and disabled in law to all intents and purposes whatsoever, to have or enjoy the said offices or employments. By which said several acts it was manifestly intended, that all persons to be admitted into such offices and employments should be, and always remain conformable to the Church of *England*, as by law established; yet the said acts have been most notoriously and scandalously eluded by many dissenters from the Church of *England*, who have received the sacrament of the Lord's Supper, in order only to have or retain such offices and employments, and to evade the penalties of the said laws, and have afterwards withdrawn themselves from the Communion of the church of *England*, and resorted to conventicles for the exercise of religion, in other manner than according to the liturgy and practice of the Church of *England*.

For the preventing therefore such scandalous and irreligious practices for the future, and the evil consequences thereof.

*Be it enacted*, &c. That if any person or persons, after the 24th day of *March*, 1704. either Peers or Commoners, who have, or shall have any offices, civil or military, or shall have any command or place of trust from or under her Majesty, her heirs or successors, or from any of her Majesty's predecessors, within the Kingdom of *England*, &c. or in the navy, or in the several Islands of *Jersey* and *Guernsey*, or shall be admitted into any service or employment in the household or family of her Majesty, her heirs or successors, or if any Mayor, Alderman, or other person, bearing any office of Magistracy, or place, or trust, or other employment relating

relating to, or concerning the government of any of the respective Cities, Corporations, &c. who by the said recited acts, or either of them, were, or are obliged to receive the sacrament of the Lord's Supper, according to the rites and usage of the church of *England*, shall at any time after their admission into their respective offices or employments, or after having such patent or grant, command or place, or trust, during their continuance in their offices or employments, knowingly or willingly resort to, or be present at any conventicle or meetings, under pretence of any exercise of religion, in other manner than according to the liturgy and practice of the church of *England*, in any place within the kingdom of *England*, &c. at which conventicle, there shall be ten persons or more assembled together, shall forfeit 50 *l.* to be recovered by him or them that shall sue for the same, by any action of debt, bill, plaint or information, in any of her Majesty's courts at *Westminster*; wherein no essoin, or protection, or wager of law shall be allowed, or any more than one imparlance.

*And*, be it further enacted, That every person convicted in any action, or upon any information, in any of her Majesty's courts at *Westminster*, or at the Assizes, shall be disabled from thenceforth to hold such office or employment, and shall be adjudged incapable to bear any office or employment whatsoever, within the Kingdom of *England*, &c.

*Provided always*, That if any persons, who shall have been convicted, and thereby made incapable to hold any office, shall, after such conviction, conform to the church of *England* for the space of one year, without having been present at any conventicle or meeting, and receive the sacrament of the Lord's Supper, according to the rights and usage of the church of *England*, at least three times in the year, such persons shall be capable of the grant of any the offices or employments aforesaid.

*Provided*

*Provided also*, And be it further enacted, That every such person so convicted, and afterwards conforming in manner aforesaid, shall at the next term after his admission into any such office or employment, make oath in writing in any of her Majesty's courts at *Westminster*, or at the next Quarter Sessions for that county or place where he shall reside, that he has conformed to the church of *England* for the space of one year, before such his admission, and that he has received the Sacrament of the Lord's Supper at least three times in the year; provided that no person shall suffer any punishment for any offence committed against this act, unless oath be made of such offence, before some judge or justice of the peace, within ten days after the said offence committed; and unless the said offender be prosecuted for the same within three months after the said offence committed; nor shall any person be convicted for any such offence, unless upon the oaths of two credible witnesses at the least.

*Provided always*, That this act, nor any thing therein contained, shall not extend, or be judged to take away, or make void any office of inheritance; nevertheless, so as such persons having or enjoying any such office of inheritance do, or shall substitute and appoint his sufficient deputy, to exercise the said office, until such time as such person having such office, shall conform, as aforesaid.

Having in this manner given an abstract of the bill, it will not be improper to add a List of the Lords Spiritual and Temporal, who voted for or against it, to which also we shall add the Proxies.

For



*For the Bill.*

**L**ord Treasurer,  
 Lord President,  
 Lord Privy-Seal.

## Dukes.

*Leeds,*  
*Bedford,*  
*Marlborough.*

## Earls.

*Jersey, then Lord Cham-*  
*berlain.*

*Kent,*  
*Bridgwater,*  
*Northampton,*  
*Denbigh,*  
*Winchelsea,*  
*Carnarvan,*  
*Thanet,*  
*Scarsdale,*  
*Anglesea,*  
*Sussex,*  
*Nottingham,*  
*Rockester,*  
*Abington,*  
*Phymouth.*

## Viscounts.

*Weymouth,*  
*Longeville.*

## Barons.

*La Warr,*  
*Chandois,*

*Pawlet,*  
*Byron,*  
*Osborn,*  
*Dartmouth,*  
*Starwell,*  
*Guilford,*  
*Ashburnham,*  
*Barnard,*  
*Weston,*  
*Granville,*  
*Guernsey.*

## Bishops.

*York,*  
*London,*  
*Winchester,*  
*Rockester,*  
*Chester,*  
*St. Asaph.*

## Proxies.

*Northumberland,*  
*Schomberg,*  
*Lindsey,*  
*Exeter,*  
*Sandwich,*  
*Bishop of Durham,*  
*Bishop of Landaff,*  
*Bishop of Exeter,*  
*Willoughby of Brook,*  
*Maynard,*  
*Leigh,*  
*Craven,*  
*Lempster,*  
*Gower,*  
*Conway.*

In all 59.

*Against the Bill.*

Dukes.

**D**evonshire,  
Somerset,  
Richmond,  
Southampton,  
St. Albans,  
Boulton,  
Newcastle.

Earls.

Derby,  
Leicester,  
Bullinbrook,  
Manchester,  
Rivers,  
Peterborough,  
Stamford,  
Sunderland,  
Essex,  
Feversham  
Radnor,  
Berkley,  
Portland,  
Torrington,  
Scarborough,  
Bradford,  
Rumney,  
Orford.

Viscounts.

Say and Seal.  
Townsend.

Barons.

Abergaveny,  
Ferrers,  
Wharton,  
Paget,  
Howard of Escrick,  
Grey of Wark,  
Lovelace,  
Mobun,  
Vaughan,  
Colepepper,  
Lucas,  
Buckingham,  
Berkley,  
Cornwallis,  
Ossulston,  
Herbert,  
Haversham,  
Somers,  
Halifax.

Bishops.

Canterbury,  
Worcester,  
Salisbury,  
Ely,  
Litchfield,  
Norwich,  
Peterborough,  
Lincoln,  
Chichester,  
Oxford,  
Bangor.

Proxies.

Suffolk,  
Carlisle,

Dorset,

*Dorset,  
Burlington,  
Mountague,  
Coventry,  
Fitzwalter,  
Eure,*

*Willoughby of Parham,  
Bishop of Hereford,  
Bishop of Gloucester,  
Bishop of Bristol.*

In all 71

The question being carried for rejecting the bill,  
the following Peers entered their dissent.

*G*odolphin,  
Rochester,  
Buckingham,  
La Warr,  
Thanet,  
Northampton,  
Marlborough,  
Winchelsea,  
Nottingham,  
Abingdon,  
Longueville,  
Weymouth,

*Guilford,  
Granville,  
Guernsey,  
Jersey,  
Weston,  
Carnarvan,  
Carmarthen,  
Stawell,  
H. London,  
G. St. Asaph,  
Tho. Roffen,  
N. Cestrien.*

DEBATES

## DEBATES in the Scotch Parliament.

71

bill,

The Parliament of *Scotland*, on the 6th of *July*, met at *Edinburgh*, and her Majesty's commission to the right honourable the Marquess of *Tweeddale*, for representing her royal person in this session of Parliament, was read by the Lord Clerk-register, and ordered to be recorded. The 11th they met again, and her Majesty's gracious Letter was presented by his Grace the Lord High-Commissioner, which follows in this manner:

ANNE R.

*My Lords and Gentlemen,*

‘ **N**othing has troubled us more since our access-  
 ‘ sion to the crowns of these realms, than the  
 ‘ unsettled state of affairs in this our ancient king-  
 ‘ dom.

Queen's  
Letter to the  
Scotch Par-  
liament.

‘ We hoped, that the foundations of the diffe-  
 ‘ rences and animosities that, to our great regret,  
 ‘ we discovered among you, did not lie so deep, but  
 ‘ that by the methods we have proceeded in, they  
 ‘ might have been removed.

‘ But, instead of success in our endeavours, the  
 ‘ rent is become wide; nay, divisions have proceed-  
 ‘ ed to such a height, as to prove matter of encou-  
 ‘ ragement



‘ ragement to our enemies beyond sea, to employ  
 ‘ their emissaries among you, in order to debauch  
 ‘ our good subjects from their allegiance, and to ren-  
 ‘ der this our ancient kingdom a scene of blood and  
 ‘ disorder, meerly (as they speak) to make you serve  
 ‘ for a diversion.

‘ Bur we are willing to hope, that none of our  
 ‘ subjects, but such as were obnoxious to the laws  
 ‘ for their crimes, or men of low and desperate for-  
 ‘ tunes, or that are otherwise inconsiderable, have gi-  
 ‘ ven ear to such pernicious contrivances. And we  
 ‘ have no reason to doubt of the assurances given us  
 ‘ by those now entrusted with our authority, that  
 ‘ they will use their utmost endeavours, to convince  
 ‘ our people of the advantages and necessity of the  
 ‘ present measures; for we have always been in-  
 ‘ clined to believe, that the late mistake did not pro-  
 ‘ ceed from any want of duty and respect to us, but  
 ‘ only from different opinions as to measures of go-  
 ‘ vernment.

‘ This being the case, we are resolved, for the  
 ‘ contentment and satisfaction of our people, to  
 ‘ grant whatever can in reason be demanded, for  
 ‘ rectifying of abuses, and quieting the minds of all  
 ‘ our good subjects.

‘ In order to this, we have named the Marquess of  
 ‘ *Tweedale* our Commissioner, he being a Person of  
 ‘ whose capacity and probity, or qualifications and  
 ‘ dispositions to serve us and the country, neither  
 ‘ we nor you can have any doubt. And we have  
 ‘ fully empower’d him, to give you unquestionable  
 ‘ proofs of our resolution to maintain the govern-  
 ‘ ment both in church and state, as by law esta-  
 ‘ blished, in that our kingdom; and to consent to  
 ‘ such laws as shall be found wanting for the further  
 ‘ security of both, and preventing all encroachments  
 ‘ on the same for the future.

‘ Thus

‘ Thus, having done our part, we are persuaded  
 ‘ that you will not fail to do yours, but will lay hold  
 ‘ on this opportunity, to shew to the world the sin-  
 ‘ cerity of the professions made to us, and that it was  
 ‘ the true love of your country, and the sense of your  
 ‘ duty to it, and therefore not the want of duty to  
 ‘ us, for we shall always reckon these two incon-  
 ‘ sistent, that was at the bottom of the late misun-  
 ‘ derstandings.

‘ The main thing that we recommend to you,  
 ‘ and which we recommend to you with all the ear-  
 ‘ nestness we are capable of, is, the settling the  
 ‘ succession in the Protestant line, as that which is  
 ‘ absolutely necessary for your own peace and happi-  
 ‘ ness, as well as our quiet and security in all our  
 ‘ dominions, and for the reputation of our affairs  
 ‘ abroad; and consequently for the strengthening the  
 ‘ Protestant interest every where.

‘ This has been our fixed judgment and resolution  
 ‘ ever since we came to the crown; and though  
 ‘ hitherto opportunities have not answered our in-  
 ‘ tention, matters are now come to that pass, by the  
 ‘ undoubted evidence of the designs of our enemies,  
 ‘ that a longer delay of settling the succession in the  
 ‘ Protestant line, may have very dangerous conse-  
 ‘ quences; and a disappointment of it would infal-  
 ‘ libly make that our kingdom the seat of war, and  
 ‘ expose it to devastation and ruin.

‘ As to terms and conditions of government,  
 ‘ with regard to the succession, we have empowered  
 ‘ our Commissioner to give the royal assent to what-  
 ‘ ever can in reason be demanded, and is in our  
 ‘ power to grant, for securing the sovereignty and  
 ‘ liberties of that our ancient kingdom.

‘ We are now in a war, which makes it necessa-  
 ‘ ry to provide for the defence of the kingdom, the  
 ‘ time of the funds that were lately given for main-  
 ‘ tenance of the land-forces being expired, and the

' said funds exhausted, provision ought also to be  
' made for supplying the magazines with arms and  
' ammunition, and repairing the forts and castles,  
' and for the charge of the frigates, that prove so  
' useful for guarding the coasts.

' We earnestly recommend to you whatever may  
' contribute to the advancement of true piety, and  
' the discouragement of vice and immorality; and  
' we doubt not but you will take care to encourage  
' trade, and to improve the product and manufacto-  
' ries of the nation: In all which, and every thing  
' else that can be for the good and happiness of our  
' people, you shall have our hearty and ready con-  
' currence. We shall only add, that unanimity  
' and moderation in all your proceedings will be of  
' great use, for bringing to a happy issue the impor-  
' tant affairs that we have laid before you, and will  
' also be most acceptable to us: So we bid you hear-  
' tily farewell.

*Given at our court at Windfor-Castle, the 25th day  
of June, 1704. And of our reign the third year.*

By her Majesty's command,

*Sic Subscribitur,*

*AL. WEDDERBURN.*

This done, her Majesty's High-Commissioner,  
the right honourable the Earl of *Seafeld*, Lord  
High-Chancellor, and the right honourable the Earl  
of *Cramarty*, principal Secretary of State, made the  
following speeches.

*My Lords and Gentlemen,*

High Com-  
missioner's  
Speech.

' **Y**OU have heard the Queen's gracious letter;  
' her Majesty therein expresses such a concern  
' for the good and welfare of this nation, and gives  
' such unquestionable proofs of it, as prevents even  
' your wishes. I do not in the least doubt, but when  
' you

' you duly consider the import of this letter, you  
' will be all of the same mind with me, that it is  
' now in our power to make ourselves and our pos-  
' terity happy.

' Such, indeed, are her Majesty's gracious conde-  
' scentions, that in order to obtain what is for our  
' good, we need only propose it, provided you do  
' it, as no doubt you will, with the regard and de-  
' ference that are due to so gracious a Sovereign, and  
' that in your demands you keep within just and rea-  
' sonable bounds, and ask nothing but what is in her  
' Majesty's power to grant.

' If there be any thing yet wanting for the better  
' securing our religion, and the present church go-  
' vernment, as now by law established; or for the  
' suppressing of vice, and encouraging of virtue;  
' if any grievances to be redressed, and new laws  
' found necessary, as I doubt not but there will, for  
' rectifying of abuses crept into your constitution,  
' or administration of the government, or any part  
' of it, whether it be in policy or justice, or for re-  
' moving all encroachments upon the sovereignty, or  
' liberties of the nation, and the securing and pre-  
' serving these entire and inviolable to our selves and  
' our posterity; I am fully empowered and entrusted,  
' not only in all these matters, to give you what rea-  
' sonable satisfaction you can demand; but likewise  
' in any thing that may be proposed, for improving  
' of learning, the advancement of trade, and encou-  
' raging manufactories: So that in effect nothing  
' hath escaped her Majesty's care, that can any  
' ways contribute to make you a flourishing and hap-  
' py people, she reckoning the welfare, peace and  
' prosperity of her subjects, the only way to her  
' own greatness and happiness.

' And yet, as if all this were too little, her Majesty  
' extends her care for you further, in recommending  
' to you, as you have heard, the settling the succes-  
' sion in the protestant line; and this her Majesty



' recommends to you with all the earnestness she is  
 ' capable of, as that which is absolutely necessary for  
 ' securing to your selves, and transmitting to your  
 ' posterity, your religion and liberties, or what-  
 ' ever else you have, or can have, that is valuable.  
 ' Sure her Majesty can have no concern in this, but  
 ' the interest of her people, which does so evidently  
 ' require the settling of the succession, and the set-  
 ' tling of it at this time, that, I hope, no true Pro-  
 ' testant, and lover of his country, will, when he  
 ' hath seriously thought on it, find just ground to  
 ' oppose it.

' Her Majesty having thus done her part, and in  
 ' a manner so good and generous, and evidently dis-  
 ' interested, it remains that we fail not to do ours,  
 ' by letting go this great opportunity (which if now  
 ' lost, may possibly never be recovered (to deliver  
 ' this nation from the inconveniencies and hardships  
 ' that it hath lain under ever since the union of the  
 ' crowns, and which of late have grown heavier  
 ' upon it.

' Her Majesty hath also recommended to you the  
 ' supplies that are wanting for the purposes mention-  
 ' ed in her letter, which I need not repeat; for  
 ' sure there are none here, who are not convinced of  
 ' the necessity of them, and who will not heartily  
 ' concur in giving of them, notwithstanding the low  
 ' circumstances the country is in at present; espe-  
 ' cially seeing her Majesty allows you to enquire  
 ' into the misapplications of former funds given and  
 ' appropriated by Parliament, and to take such a  
 ' course as may prevent the like for the future.

' One thing more I have to add, and that is con-  
 ' cerning the business of the plot, of which so great  
 ' noise hath been made in our neighbour nation:  
 ' her majesty hath allowed me to acquaint you, that  
 ' in due time the whole matter shall be laid before  
 ' you, and that she hath given the necessary orders  
 ' for having both the persons that have been examined

' in

‘ in *England*, and the papers that relate to that af-  
 ‘ fair, sent hither. Her Majesty doubts not but your  
 ‘ enquiries into that plot, or any other practices of  
 ‘ the like nature, will end in your laying down solid  
 ‘ measures for preventing of them, or the fatal con-  
 ‘ sequences of them in time to come; and as to any  
 ‘ questions or contest that may arise upon such en-  
 ‘ quiries amongst you, her Majesty hopes, that  
 ‘ you will manage them with all the temper and  
 ‘ moderation that the nature of the thing will  
 ‘ allow.

*My Lords and Gentlemen,*

‘ I have spoke long, contrary to my way and in-  
 ‘ clination, and therefore I shall only add, in a word,  
 ‘ as to my self, that I am very sensible of my un-  
 ‘ fitness for so great a trust; but since such is her  
 ‘ Majesty’s pleasure, I will do my best, and I shall  
 ‘ esteem my self very happy, if I can any ways con-  
 ‘ tribute to bring matters to any settlement in this  
 ‘ nation. It is a great encouragement to me, I must  
 ‘ own it, that the present opportunity, in a manner,  
 ‘ enables me to give, at the same time, the greatest  
 ‘ proofs that I can ever hope to give of my duty to  
 ‘ her Majesty, my love to my country, and my re-  
 ‘ spect to Parliaments, in particular to this honour-  
 ‘ able meeting.

The Lord High-Commissioner having done,  
*James, Earl of Seafeld*, Lord High-Chancellor,  
 took the word, and spoke to this effect:

*My Lords and Gentlemen,*

‘ **Y**OU have heard her Majesty’s most gracious L. Chancel-  
 ‘ letter, and what his Grace my Lord-Com-  
 ‘ missioner hath been pleased to add; which do fully  
 ‘ lay before you the weight and great reasons, for  
 ‘ which her Majesty hath been pleased to call you to-  
 ‘ gether at this time; and you must all be convinced

‘ that the chief design of her Majesty’s government  
 ‘ is to advance the happiness and welfare of her  
 ‘ people, and to protect them in the full posses-  
 ‘ sion and enjoyment of their religion and civil  
 ‘ concerns.

‘ Her Majesty doth, with a very tender and affec-  
 ‘ tionate concern, lay before you the danger of divi-  
 ‘ sions and animosities ; and recommends to you, to  
 ‘ employ your thoughts for promoting what is for  
 ‘ the security and advantage of the kingdom : And  
 ‘ you cannot but be sensible, that our divisions must  
 ‘ encourage our enemies abroad, to form designs to  
 ‘ disturb the peace and tranquility we now enjoy ;  
 ‘ and therefore ye will, no doubt, make use of this  
 ‘ opportunity to convince all, that this nation is  
 ‘ fixed and firm in their loyalty to her Majesty, and  
 ‘ that all her good subjects will constantly support  
 ‘ her government.

‘ Her Majesty doth, with great earnestness, recom-  
 ‘ mend the settling of the succession to the crown in  
 ‘ the protestant line, as what would be the surest  
 ‘ foundation for the security of your religion and  
 ‘ liberties, and will contribute greatly to the ad-  
 ‘ vancement of the protestant interest every where ;  
 ‘ and this being of so great consequence, it is not to  
 ‘ be doubted, but that you will think this the fit op-  
 ‘ portunity for taking it under your consideration,  
 ‘ while we have the advantage of being convened  
 ‘ in peace under her Majesty’s protection, and can  
 ‘ deliberately consider what is the most profitable  
 ‘ mean for the future, to secure and preserve all that  
 ‘ is valuable to us : And, for your further encourage-  
 ‘ ment, you have heard how her Majesty hath given  
 ‘ full instructions to her Commissioner, to grant such  
 ‘ conditions of government, with regard to the suc-  
 ‘ cessor as can reasonably be demanded, for secur-  
 ‘ ing of the sovereignty and liberties of this king-  
 ‘ dom ; so that nothing is wanting on her Majesty’s  
 ‘ part

part, that is necessary for the establishment and security of this nation.

' You know that her Majesty is engaged in a most just and necessary war, for the defence of the liberties of *Europe*, which makes it necessary that supplies be given for maintaining the forces, for repairing the forts and garrisons, for providing the magazines with arms and ammunition, and for maintaining the frigates, which have proved so useful for the guarding of your trade: All these being so plainly needful, it is not to be doubted but that you will readily comply therewith. It is to be regretted, that the nation is in so low a condition; but what we give is necessary for our own defence, and will circulate within the kingdom: And her Majesty doth freely allow of taking inspection of the funds that have been given by Parliament, and appropriated for the publick use, and will take care, that what shall be now given shall be duly applied.

' Her Majesty hath given frequent assurances of her resolution to maintain the established government of the church, and hath recommended to you to fall upon effectual means for discouraging of vice and immorality, and for encouraging true piety and religion, and providing for, and employing of the poor.

' The trade of the kingdom doth also deserve your serious consideration; for the advancement of which, and the improvement of the product and manufactories of the kingdom, her Majesty gives you assurance of her ready concurrence.

' My Lord Commissioner has acquainted you, that the plot, which has made so great a noise here, and in our neighbour nation, shall be laid before you, with all its evidences; and it is not to be doubted, but that you will take care to do therein what is necessary for the discouraging of bad practices, which may tend to disturb the peace and quiet of this



kingdom; and in all your proceedings in this matter, that you will avoid animosities, and make it your principal care to provide for the publick security and peace.

*My Lords and Gentlemen,*

I shall conclude with recommending to you again, the serious consideration of what her Majesty has so earnestly recommended; and that ye will improve this opportunity, which God hath given you for securing to your selves, and transmitting to your posterity, your religion and liberties, which will certainly be for your honour and happiness, and will render you equally acceptable to her Majesty, and to all her subjects.

Lastly, *George, Earl of Cromarty*, Lord Secretary, spoke to this purpose:

*My Lord Chancellor,*

E. of Cromarty's  
Speech.

Albeit this seat wherein it has pleased her Majesty to place me, does allow, or rather oblige me to say something on this occasion, yet my Lord High-Commissioner, and my Lord Chancellor have said so fully, and so well, as I fear what I can say will prove a diminutive adjection: But I shall speak little, and (if I can remember) I shall not repeat. My Lord, should all her servants be silent, the actings, the sayings, the whole tract of her Majesty's government, and the happy effects thereof do speak loudly, that if ever Prince or Sovereign have devoted themselves to God and their country, without flattery or hyperbole, we may truly say, that our most gracious Queen hath: All may hear, and those who have the honour to attend her Majesty, may see, that her time, her care, her pleasure, her leisure, her treasure, yea, her very health and life, are sacrificed every day, and almost every time of the day, to actual exercise  
of

' of devotion to God, or administration of govern-  
 ' ment to her people ; and we may bless God, that  
 ' by his blessing on her endeavours, all and every  
 ' one of her subjects do participate of the fruits of  
 ' the royal sacrifice : Nay, and all the best part of  
 ' *Europe* beside, that is her Majesty's confederates ;  
 ' and her and their enemies do find with grief what  
 ' we feel with satisfaction : And tho' her Majesty  
 ' has many dominions under her royal care, and  
 ' more confederates ; yet she omits not any of our  
 ' particular concerns, and we partake in our full  
 ' capacity of those happy effects. We are, with  
 ' many others, engaged in a great, but (to full con-  
 ' viction) necessary war, the effects whereof are  
 ' dreadful and hurtful, not only in expence and sol-  
 ' diers (which all must afford). But as to seeing our peo-  
 ' ple slaughtered like beasts in our streets and houses,  
 ' to see our towns in fire, our women ravished, our  
 ' sacred things prophaned, and many other dismal  
 ' effects of war and rapine, (which almost all others  
 ' feel and see :) We (thanks to God, and under him  
 ' to his vicegerent our Queen) do only hear of these  
 ' things : My Lord Chancellor, this we ought, and,  
 ' I doubt not, we do remember and consider. My  
 ' Lord, this is not offered as an eulogy or pane-  
 ' gyrick on her Majesty ; she is far above what I  
 ' can say, but it is an antecedent to the following  
 ' subsumption.

' And as this of her care of us, and zeal for us,  
 ' is evident, so it is no less true, that the Queen sits  
 ' higher than we do, or ought to do, on ~~his~~ throne,  
 ' as she does also on the throne of her other do-  
 ' minions. And farther, we know, that she is one  
 ' of the heads, and highly situate in all the great  
 ' confederacy, whereof her Majesty is, if not the  
 ' chief, yet a principal ; and from this both reason  
 ' and discretion oblige us to conclude, that she must  
 ' see very much farther, and more clearly into the  
 ' actions, designs, and practices of her and our ene-  
 ' mies,

‘mies, in the concerns, and in what directs and  
 ‘moves our allies, than it is possible for us to do,  
 ‘who both stand lower, and are bounded in our nar-  
 ‘rower spheres: Therefore, as in all matters, so  
 ‘especially in points of fact, we are bound to rely  
 ‘on her information and her judgment more than  
 ‘our own, since what we can but conjecture, is ob-  
 ‘vious to her certain knowledge; and if we should  
 ‘fall (as I confidently hope we will not) into the  
 ‘indiscretion, to oppose our conjectures to her  
 ‘knowledge, that could not miss of dire effects,  
 ‘and readily most mischievous to our selves.

‘Her Majesty’s royal letter, my Lord Commis-  
 ‘sioner his Grace, and my Lord Chancellor have  
 ‘plainly laid before us matters of great importance:  
 ‘Her Majesty is very express in what she purposes:  
 ‘her reason and antecedent is as plain and express  
 ‘as the conclusion. I hope the two motives I gave  
 ‘for believing, and consequently for obeying her  
 ‘Majesty, are also plain and concluding.

‘My Lord Chancellor, the honour of being her  
 ‘Majesty’s Secretary, obliges me to obviate and re-  
 ‘move an aspersiion on the Queen’s Majesty’s candor  
 ‘and honour (if any such insinuation be made) which  
 ‘is that some would persuade others to believe, that  
 ‘the Queen has a secret will in the affair now before  
 ‘us, contrary to her express will revealed and de-  
 ‘clared by her in her royal letter. My Lord, I am  
 ‘persuaded she does hate that position in theology,  
 ‘and I am certain she does so in her politicks; and  
 ‘the reason of my certainty in this is, that her  
 ‘Majesty did command me, and I think her other  
 ‘servants, expressly to assure this house; That no-  
 ‘thing in her service could please her better, than  
 ‘if they should believe and obey her in what she  
 ‘proposes in her letter, and nothing can displease  
 ‘her more than to do otherways.

‘My

' My Lords, both old custom and good manners  
 ' oblige us to begin with her Majesty's letter, and in  
 ' its method; if my zeal and duty on this subject  
 ' have drawn me in to speak more than I intended,  
 ' or perhaps needed, I beg the house's pardon: But  
 ' since my hand is in, and that I neither use nor love  
 ' to speak oft, I shall only add my earnest and hum-  
 ' ble wish for these two things; 1. That the orders  
 ' of the house may be strictly observed; for by that  
 ' much time will be saved, and many inconveniencies  
 ' prevented; and the not doing of this, will disgrace  
 ' this great court. The second is, That we may  
 ' redargue one another with kindness and civility;  
 ' let our force fall on the subject which we oppugn,  
 ' or the measure which we reject, and by no means  
 ' on one another's persons. Would to God we were  
 ' always unanimous; but that seldom, if ever, was  
 ' in so numerous a court or council: But when we  
 ' differ, will we argue the better by our being angry?  
 ' No, *impedit ira animum*. Will we convert others so  
 ' well, by making them angry, as by a meek calm-  
 ' ness in arguing? Does spite add force to reason; or  
 ' does it produce that consent which we endeavour  
 ' to obtain? So for our own sakes, and for the ho-  
 ' nour of our reasonings, let us urge and reply with  
 ' calmness. I have oft regretted to see good reason-  
 ' ing lost, or at least ineffectual in great measure, by  
 ' the heats in arguing; and I will say it were a pity;  
 ' for the members of great courts elsewhere may, in  
 ' the opinion of many, speak better language than  
 ' these of this do; yet they do not speak better sense.  
 ' And besides these motives to calm reasoning, this  
 ' ought to determine us all against it, to wit, that  
 ' neither our heat, nor our self-pleasing arguments,  
 ' are, what will determine any debate. The law  
 ' of order, the constitutions, statutes, and necessity,  
 ' gives the faculty of concluding to the whole of  
 ' this house; and all we can say must be submitted  
 ' to what this whole house will approve, or to what  
 ' the



‘ the major part will agree in : And therefore, much  
 ‘ reasoning, and all heats, will, on many accounts,  
 ‘ be profitably forborn. I conclude with this asser-  
 ‘ tion, which I think evident without discourse, that  
 ‘ as the union of *Britain* is apparently its greatest po-  
 ‘ litick good ; so, as certainly, and by the infallible  
 ‘ rule of contraries, a division of *Britain* is its great-  
 ‘ est evil : And then, it is a necessary corollary,  
 ‘ whoever is not for the union of *Britain*, may be  
 ‘ concluded an enemy to it.

The 13th the Parliament met again, and the Duke of *Hamilton* made a speech, desiring, that her Majesty’s letter might be considered, and likewise the nomination of a protestant Successor, but insisted at the same time, that Commissioners might be named to treat previously with *England*. This overture occasioned a great debate the 17th. Upon which the two following speeches were made, in relation to the settlement of the succession of that kingdom in the *Hanover* line.

My Lord Chancellor,

Speech in  
the Scotch  
Parliament  
about the  
*Hanover*  
succession.

‘ **W** E have had a long vacancy ; nine months  
 ‘ have given us a new light, and have let us  
 ‘ into the knowledge of men and things. The act  
 ‘ of security was what we staid upon very long last  
 ‘ sessions : I was for it as much as any man, but my  
 ‘ mind as well as judgment is altered, and I am now  
 ‘ well assured I was in the wrong. For if her Maje-  
 ‘ sty could have passed it into a law, it would have  
 ‘ done her nor us no manner of service, because it  
 ‘ left the sessions loose during her Majesty’s life-time ;  
 ‘ which omission alone may undo her (whom God  
 ‘ preserve) and us.

‘ We were not aware of the deep designs of some  
 ‘ who pretended only the good of the kingdom, a  
 ‘ specious pretext to keep this nation free, and as a  
 ‘ by-weight to throw into ballance upon occasion,  
 ‘ for a help to sway with those of our neighbours,  
 ‘ who

who may be so wickedly and traiterously inclined, as to wish and act for the pretended Prince at *St. Germain*, I mean for *France*, against the rightful and lawful title of her Majesty, and the succession of her *English* crown, so well established by the laws of that kingdom. I hope, my Lord, the wisdom of this house will take care to disappoint the men of such pernicious and dangerous designs. There have been, and are still *Achitophels*; but God hath turned their counsels into folly: A trick will serve but for one turn amongst men of common sense.

We ought to be very thankful to God and the Queen, that things have been set before our eyes of late in a clear light; and some amongst us ought to bless both, that they for their contrivances were not brought within the verge of the law, and made an example and terror to others, that none may venture on the like wicked practices against our Sovereign, and the peace of her government. These mens actions are known, and all their words are carried by the birds of the air to her Majesty's ears.

I beg leave, my Lord, to presume that there are few in this house but are well acquainted with the history of *Peter Warbeck*, (*alias Perkin*) in our King *James IV's* time. He was bred and nursed up with a design to dethrone *Henry VII.* by *Margaret* Dutchess of *Burgundy* and *Flanders*, as a fit tool to satisfy her revengeful temper; and tho' she knew him to be only the son of a poor man at *Tournay*, she gave him the name and title of Duke of *York*, and true and lineal heir of her deceased brother *Edward*, late King of *England*. She equipt him, and gave him ships, men and money, and sent him into *Ireland*, where a rebellion was raised, as well as in *England*, by him and his adherents: He failed in the expedition. The *French* King, *Charles VIII.* found him a fit instrument to serve a turn for him also; wherefore he entertained him as the Prince of *England*,  
and

‘ and he, with the Dutcheſs of *Flanders*, equipt him  
 ‘ out a ſecond time : But finding difficulties, at laſt he  
 ‘ came here to our K. *James IV.* The ſtory of this  
 ‘ Knight errant had juſtly given our King and court  
 ‘ grounds to believe him a notorious impoſtor. Upon  
 ‘ this pretended Prince’s addreſs to the King for ſome  
 ‘ aid, his Maſteſty wiſely called his council, and aſk-  
 ‘ ed their advice what to do on the ſubject ; *Bu-*  
 ‘ *chanan* informs you, *Cum ſententiæ rogarentur, pru-*  
 ‘ *dentiores & quibus major erat rerum uſus, rem inte-*  
 ‘ *gram reponendam cenſebant.*

‘ Here, my Lord, the old wiſe men of experience  
 ‘ in council were of opinion, that it was not fit for  
 ‘ his Maſteſty to receive or entertain this pretended  
 ‘ Prince, who they wiſely believed to be a fourb, and  
 ‘ who had given great trouble to this iſland, and was  
 ‘ like to give much more.

‘ But when the queſtion came to the young nobi-  
 ‘ lity of the council, the ſame author ſays, they were  
 ‘ the majority, and carried it in favour of *Perkin* :  
 ‘ *At major pars, vel ob pueritiam rerum, & animorum*  
 ‘ *inconstantiam, &c. fortunam hominis commiſerabantur* :  
 ‘ The young counſellors, either for want of expe-  
 ‘ rience, or for want of ſteddineſs of mind, were  
 ‘ more eaſily caught. They were more in number,  
 ‘ and had a compaſſion for the young ſtranger. They  
 ‘ were told he was like the late King *Edward*, his  
 ‘ pretended father, and the family of *York*, tho’ they  
 ‘ never had ſeen any of them.

‘ Here the cheat went on ; he had the entertain-  
 ‘ ment of a Prince, he had a wife out of one of our  
 ‘ noble families, he had an army raiſed in his fa-  
 ‘ vour, and led into *England* by our young King,  
 ‘ and after much blood and treaſure ſpent on this pre-  
 ‘ tended Prince, the cheat was diſcovered ; he was  
 ‘ ſent away out of our country, and ſome time after  
 ‘ had the reward of villany.

‘ My

‘ My Lord, this act of inconsiderate hospitality to  
 ‘ one who was but a cheat, gave first ground to the  
 ‘ world abroad to call our judgment into question;  
 ‘ and no body will read the history, but will con-  
 ‘ clude, that our predecessors were extremely imposed  
 ‘ on, and that the impostor might have caused the  
 ‘ utter ruin of their liberties and country.

‘ My Lord, the same game is a playing now. Per-  
 ‘ haps some have never read the history, and others  
 ‘ have forgot it. No wonder, it happened 200 years  
 ‘ ago: But we cannot forget what happened sixteen  
 ‘ years ago; when no male issue was like to succeed  
 ‘ King *James VII.* one was to be found *viis & modis*,  
 ‘ *per fas aut nefas*: One at last was said to be born at  
 ‘ St. *James’s*, June 1688. That child died soon af-  
 ‘ ter, a second was put in his place, and carried to  
 ‘ and nursed up at *Richmond*; but God thought fit  
 ‘ to kill that second child also.

‘ Now, my Lord, this pretended Prince of *Wales*  
 ‘ is a third child, in whose veins there is not a drop  
 ‘ of royal blood.

‘ Here is a new *Perkin* come into the world 200  
 ‘ years after the first, who was sent to ruin *England*  
 ‘ and *Ireland*, only to satisfy the violent malice of a  
 ‘ revengeful woman.

‘ This second pretended Prince is nursed up by  
 ‘ *Rome, France*, and armies of implacable revenge-  
 ‘ ful priests, who give him the title of King.

‘ For what? To the end that he may prove a  
 ‘ more fit instrument, upon any occasion, to root  
 ‘ out and totally destroy us and our holy religion,  
 ‘ which they call heresy.

‘ Some of us, my Lords, are no wiser than our pre-  
 ‘ decessors in that point: We give the priests and  
 ‘ other agents of *France* and *Rome* leave to pervert our  
 ‘ understanding; we take such impressions as remain;  
 ‘ Young mens minds are tender and soft, and retain  
 ‘ the first impressions long. Some of us have been  
 ‘ in *France* not many years ago, and have seen this  
 ‘ pretended



‘ pretended Prince, and commend his person and  
 ‘ parts, his features, &c. and say he is very like the  
 ‘ royal family; tho’ some of us never saw one of  
 ‘ them, except our own Queen.

‘ Thus young men, are very apt to be led out of  
 ‘ the way. I have known some by keeping bad com-  
 ‘ pany did catch the *French* disease; modesty and  
 ‘ shame made them conceal it till it was too late, and  
 ‘ then it cost them their life. It is the case at present  
 ‘ with some of us here, who have got the *French* in-  
 ‘ clinations, more dangerous in this nation than the  
 ‘ disease, and will not own it till it is too late, and  
 ‘ then it may cost them their lives, their estates,  
 ‘ with the ruin of their posterity. Whatever young  
 ‘ men may do, my Lords, for want of better infor-  
 ‘ mation, yet it is strange that men of riper age, pre-  
 ‘ tenders to religion, to the good and interest of our  
 ‘ country, are said to be tainted with the same incli-  
 ‘ nation to have *France* rule over us; of which men  
 ‘ there is a mighty jealousy: I will not believe  
 ‘ them guilty, and at the same time I cannot an-  
 ‘ swer for them; but let their works testify what  
 ‘ they aim at.

‘ We all talk loud of love for our country and  
 ‘ religion, but I presume to say, that the love of  
 ‘ money, and self-interest, hath appeared more our  
 ‘ study than any thing else.

‘ What bad practices hath not her Majesty by her  
 ‘ great care found out? The contrivers may cover  
 ‘ their designs the best way they please; but, my  
 ‘ Lord, whoever waits or inclines for the bondage and  
 ‘ cruel oppressions we in this nation are so lately de-  
 ‘ livered from, be who they will, are and may be  
 ‘ found guilty of crimes of dangerous consequence,  
 ‘ and of a transcendant nature, no less than the sub-  
 ‘ version of the government of this kingdom, and  
 ‘ the alteration of the protestant religion; and this  
 ‘ not upon a bare information only; her Majesty  
 ‘ knows

' knows their converse, and their actions speak aloud  
' to all about them.

' Such practices are an enemy to all goodness and  
' good men; it is from such proceedings, that our  
' assembly is corrupted, and 'till this fountain of  
' mischief is purged, we cannot expect to have any  
' clear channels: All here know what I mean.

' These crimes are various in their natures, hei-  
' nous in their quality, and universal in their extent.  
' If we examine them, my Lord, theologically, as  
' they stand in opposition to the truth of God, they  
' will be found to be against the rules of faith, against  
' the power of godliness, and against the means of  
' salvation.

' If you examine them morally, as they stand in  
' opposition to the light of nature, to right reason  
' and the principles of human society, you will then  
' perceive pride without any moderation; such a  
' pride as that which exalts it self, &c. malice with-  
' out any provocation, malice against virtue, against  
' innocency, against piety; injustice without any  
' means of restitution, even such injustice as does  
' rob the innocent of their just right and unspotted  
' reputation.

' If these men, my Lord, who set up for the pre-  
' tended Prince of *Wales*, be examined by legal rules  
' in a civil way, as they stand in opposition to the  
' publick good, and to the laws of the land al-  
' ready in force; these men, I say, may be found to  
' be traitors against her Majesty's crown, and in-  
' cendiaries against the peace and safety of this king-  
' dom; they may be found the highest, the boldest,  
' and the most impudent offenders that ever were;  
' betrayers of the Queen and people, as well as of  
' this country and our religion. If any one here is  
' sensibly pinched, let him consider whether or no  
' he is guilty; if he is, let him sin no more, lest a  
' worse thing befall him.

‘ My Lord, I see many here may remember, if  
 ‘ they please, the frequent tragedies that were acted  
 ‘ among us some twenty years ago. I am sure there  
 ‘ are several of us, whose nearest relations were sa-  
 ‘ crificed to the despotick and arbitrary will, and  
 ‘ to the revengeful resentments of popery and its  
 ‘ principles ; it was then that the orders to persecute,  
 ‘ execute, to hang, draw and quarter, and to shed  
 ‘ the best blood of this nation, without, nay, against  
 ‘ any law, were by a prerogative royal without  
 ‘ reserve.

‘ I see some here were banished, and forced to wan-  
 ‘ der in exile, and beg shelter from foreign Princes,  
 ‘ whose families were dispersed and ruined, whose  
 ‘ estates were torn in pieces, and given to strangers,  
 ‘ men of another communion. Can these melancholy  
 ‘ reflections be forgot so soon by our selves, who  
 ‘ were the martyrs ? A spirit of delusion seems to  
 ‘ cover the eyes of our understandings, till we fall a  
 ‘ second sacrifice to the same bloody actors.

‘ I speak for nor against no party of men ; but, my  
 ‘ Lord, it is high time for us to consider in cool blood,  
 ‘ how to barricado our selves against the assaults of  
 ‘ the common enemy, *France* and popery ; in order  
 ‘ to which I have two things to move, which are,  
 ‘ that we may all here obey our Saviour’s new com-  
 ‘ mandment, love one another, and often repeat that  
 ‘ excellent prayer taught us by that same blessed Sa-  
 ‘ viour ; by doing whereof we shall be brought to for-  
 ‘ give one another, as we desire God to forgive us.  
 ‘ This done, we shall be in better circumstances to  
 ‘ lay aside our pride, our passion, covetousness, our  
 ‘ vain glory, and unrelenting revenge, which alone  
 ‘ belongs to God Almighty to repay ; and shall be in  
 ‘ a condition to serve our Sovereign, in obedience to  
 ‘ her just commands, our country and people, in their  
 ‘ necessary requests, and settle a protestant suc-  
 ‘ cessor, while we have the occasion and power in our

‘ own

own hands: Accidents may happen and put it out of our way, ever to do it to our advantage.

Wherefore I move, it may be considered and finished, before this house proceed to any other business.

*My Lord Chancellor,*

I Second the noble member that spoke last, in his motion for settling the succession, before the house proceeds to any other business; but I do not pretend to give any direction how the matter shall be done, let the wisdom of this honourable house consider with mature deliberation, what can preserve us from *Rome* and the *French King*, that her Majesty's royal person and crown may be secure from all invasions abroad, and disturbances at home.

My Lord Chancellor, Her Majesty deserves all the returns of loyalty and duty that are in our power to make; I believe she hath given my Lord commissioner such instructions as may prove to our advantage, if they are duly put in execution. Complaints have been made by some, that they are not full for settling a successor; I am morally sure, my Lord, the complaint is ill grounded, which I hope his grace will soon declare to this house, and satisfy all her good and loyal subjects, how much she hath the peace and advantage of this her ancient kingdom in her thoughts.

As hath been well observed just now, last sessions many of us were misled; I own my mistake of men and things; we were going very fast into a labyrinth; our leaders misinformed us; the nation now may see its interest; Theoretical schemes and projects, which can never be brought to practice, ought to be laid aside; they create much debate, spend much time, and can never be of use.

My Lord, with submission, this assembly ought



‘ to lay aside all frivolous debates, that our judgments may not be called in question elsewhere.

‘ I am for following the advice just now mentioned: Let us forgive and love one another, let us join hearts and hands to keep out the known enemy of our religion. If that deceiver or breaker of sacred vows and treaties, made and sworn upon the Holy Gospel at the Altar, in the most solemn and most religious manner, shall by his power and our mistaken management, put upon us that thing in the air, called the Prince of *Wales*, of no birth, of no blood, sprung from whom is unknown to himself, as well as to us; we must be ruined, my Lord, every man here who enjoys his estate, may easily know what he has to trust to; we all know who must come with him, the same men and principles who destroyed us twenty years ago. I humbly move, with submission, that we may pass by all the mutual vexatious animosities which were amongst us but lately; all parties have been to blame; God will pardon the penitent: The Queen oversees, and graciously forgives; let us mutually do the same, and settle our succession, and secure and help our selves, and God will help us; it will prove our own and the people’s safety.

*Salus populi suprema Lex esto.*

‘ Let us follow the example of our wise neighbours, and make such laws as may tie up the hands and terrify the hearts of our own depraved subjects, who dare offer to act or speak in favour of any, in prejudice to her Majesty’s lawful and rightful title to her crown and dignity.

‘ I am confident, my Lord, no man here dares own his inclinations to be for the *French* King or that pretended Prince, whatever prospect he may have of titles, honours or subordinate power from him, who hath no bowels of compassion left, who consumes

' consumes his own vitals, by persecuting and tormenting his own best subjects, and spares neither sex nor age in his neighbouring country, even of his own mistaken religion, if they but refuse to be his slaves; witness his new conquests in *Alsace* and *Flanders*. What then are we to expect, who by that tyrant are accounted hereticks?

' Whoever are so wicked amongst us, as to venture either to counsel, conduct or invite, whenever he comes (which God prevent) may expect the same fate. For my own part, my Lord, I have no personal prejudice against him, nor the pretended Prince of *Wales*, but I here solemnly declare, that I will oppose him or either of them, with all their adherents, whilst there is a drop of blood in my veins; and I am morally sure of 100000 of the best men in *Britain* to accompany me in the opposition; and I am sure, my Lord, of this, that the nation in general will go along with me also; God be praised, we are protestants, and of the reformed religion, for which I hope we shall ever be ready and willing, upon any such occasion to sacrifice our lives and our fortunes, to prevent all these impendent evils. My Lord, let us settle a successor who is a known protestant, and of our own royal and ancient race of Kings.

' For an argument of this, an anonymous author, in his remarks on the late plot, gives some reasons for it, which for your information I here presume to repeat: After he excuses two noble Dukes, he says, 'Tis hoped this is sufficient to make it plain, that to insist on an union and communication of trade at this time, would retard the succession, which may be dangerous to our selves, and to the whole protestant interest all over Europe.

' The danger to our selves is evident, from the conspiracy that Frazer and his accomplices have been carrying on in the Highlands, and other parts of this kingdom,

‘ kingdom, the general discontents which are in our  
 ‘ nation, &c. and gives his reasons, page 48.

He continues to tell you, ‘ *That the Jacobites here,  
 ‘ and their friends beyond sea, make a great improve-  
 ‘ ment of the delay of settling the succession; they flatter  
 ‘ themselves and impose upon the world, that it proceeds  
 ‘ from the inclinations of our people to the St. Germain  
 ‘ family.*

‘ Then he goes on to tell you, My Lord, of our  
 ‘ divisions, which, says he, *encourage the French  
 ‘ to solicit a rebellion, and to attempt an invasion,  
 ‘ either of which effected, transforms our country into  
 ‘ a field of blood. And supposing (which God forbid)  
 ‘ her Majesty should die whilst the succession is unsettled,  
 ‘ and our country lying under these intestine divisions,  
 ‘ the Hanover and St. Germain parties will certainly  
 ‘ engage us in a civil war. England and Ireland  
 ‘ will assist the first, and France the other. This will  
 ‘ make our nation a theatre of woe and calamity, and  
 ‘ whoever hath the advantage in such a case, we must  
 ‘ be slaves for ever.*

‘ Our author, my Lord, concludes the paragraph,  
 ‘ and tells us in such circumstances, *that there will be  
 ‘ no room for thoughts of insisting on limitations, and  
 ‘ humbly conceives that what is said, is sufficient to shew  
 ‘ the necessity of settling the succession upon the foot of our  
 ‘ old constitution; that it will be the only way to secure  
 ‘ us against those dangers we are threaten’d with, from  
 ‘ the madness and folly of both parties, viz. Whig and  
 ‘ Tory.*

‘ My Lord Chancellor, this anonymous author hath  
 ‘ said very much in favour of the rights and privi-  
 ‘ leges of this kingdom in these remarks, and other  
 ‘ books which I have seen; and in particular, hath  
 ‘ been at some pains to excuse some great men, whose  
 ‘ works and actions I would have rather to speak  
 ‘ and plead for them, that we may see and know in  
 ‘ good earnest in whose company we are, and with  
 ‘ whom

‘ whom we have to do. Yet I must say, the author  
 ‘ seems in earnest for settling the succession.

‘ ’Tis certain, my Lord, whoever is for pressing  
 ‘ an union or a communication of trade at this time,  
 ‘ is diametrically against the settling the succession;  
 ‘ and if we do not perform this necessary point this  
 ‘ sessions, what constructions will men of unbiassed  
 ‘ principles, men of the same religion with our  
 ‘ selves all the world over, put upon our manage-  
 ‘ ment?

‘ Will not the majority of this assembly be justly  
 ‘ suspected, if the succession be not settled this time?  
 ‘ On this point depends the security of all that is dear  
 ‘ to us both spiritual and temporal, at home and  
 ‘ abroad; and whoever are against it, without all  
 ‘ manner of doubt, are enemies at bottom to our  
 ‘ Queen, to our religion and government, and to the  
 ‘ people of this kingdom, and their posterity. The  
 ‘ person, my Lord, who I presume you will think  
 ‘ fit to name for a successor, is her Royal Highness  
 ‘ the Electress Dowager of *Brunswick and Lunen-*  
 ‘ *burgh*, the Princess *Sophia*; she is the next pro-  
 ‘ testant of our own royal family, whose mother was  
 ‘ a native of our own country, born at *Dunfermling*.  
 ‘ Her Highness’s blood is truly royal, her inclina-  
 ‘ tions and heart, as I am credibly informed, are  
 ‘ intirely *British*; and, my Lord, we can go no  
 ‘ where else for a successor, but to her and the heirs  
 ‘ of her body. When this point is settled on the  
 ‘ best conditions proper for us to ask, and in her  
 ‘ Majesty’s power to grant, none in this assembly  
 ‘ will have occasion so very often to make mention  
 ‘ of her Majesty’s death, as they did last year, which  
 ‘ indeed carries something rude in expressing it.  
 ‘ We all know, my Lord, she is mortal; may we  
 ‘ act and speak as if we thought our selves so, and  
 ‘ may we never have occasion to make more mention  
 ‘ of her death; may she outlive all of us; she is  
 ‘ the support and glory of us, of our religion, and



‘ of the quiet and peaceable government we all enjoy ;  
 ‘ and by her shining character, illustrates and adorns  
 ‘ all her good subjects.

‘ Wherefore, my Lord, let it never be said, that  
 ‘ we of this Parliament, either by neglect or by  
 ‘ wrong principles, or by a mistake in our judgments,  
 ‘ grasping at what can never be obtained, are either  
 ‘ the immediate or mediate cause of eclipsing so  
 ‘ bright a lustre, as shines thorough all the distinct  
 ‘ parts of her wise management at home as well as  
 ‘ abroad. From hence we hear the joyful news of  
 ‘ victories, and a happy progress by the wise and  
 ‘ adorable providence, in the late great success  
 ‘ vouchsafed to her Majesty’s arms and those of her  
 ‘ allies ; whereby God hath thus far disappointed the  
 ‘ hopes, and confounded the devices and ambitious  
 ‘ designs of the common enemy.

‘ I presume to say, with submission, that our di-  
 ‘ visions amongst our selves these last two years past,  
 ‘ have given her Majesty more real vexation and  
 ‘ trouble than all the great affairs of *Europe*, of which  
 ‘ she hath a very great share ; this alone is a reproach  
 ‘ to our nation in general : Whereas indeed the true  
 ‘ cause is the pride, ambition, and covetous humour  
 ‘ of some few particular men of both parties, who all  
 ‘ pretended the service of the Queen and the publick  
 ‘ good ; whereas in good earnest, all that these  
 ‘ pretended patriots aim at, is to be chief, and the  
 ‘ first in posts and offices of profit and trust, by  
 ‘ which they may pretend a privilege to spend and  
 ‘ squander away the publick revenue, oppress the  
 ‘ people, to support their own pride, vanity and  
 ‘ luxury.

*Hinc ille Lacrymæ.*

‘ From such managers and self-interested passionate  
 ‘ proud men are all our misery, and all the re-  
 ‘ proaches cast upon the nation : Covetousness and  
 ‘ the

‘ the love of money blinds these men’s understand-  
 ‘ ings. Let us not follow their maxims, lest we  
 ‘ prove troublesome to our sovereign, and useless to  
 ‘ the publick. I know very well, my Lord, some  
 ‘ here who are really for the succession, but are not  
 ‘ for having it settled at this time for several pre-  
 ‘ tended reasons; but a great one is, they would  
 ‘ not have his Grace, my Lord Commissioner, have  
 ‘ the honour of passing it, whilst he sits on the  
 ‘ Throne.

‘ I confess for my own part, I have no concern  
 ‘ whoever does a good thing, provided I have a  
 ‘ share of it; and I hope, if any man is against it on  
 ‘ that account, he will repent and consider the pub-  
 ‘ lick advantage: From which, and from all that  
 ‘ has been said, I am, my Lord, for settling of the  
 ‘ succession now, before the house proceeds to any  
 ‘ other business.

But, notwithstanding these speeches, the Earl of *Rothes* having prescribed another resolve, it was carried by a majority of 55, that the resolves presented by the said Earl, and that presented by the Duke of *Hamilton*, should be jointly voted; and they are as follow:

Resolves of  
the Scotch  
Parliament.

*Resolved,*

That the Parliament will not proceed to a nomination of a successor, unless we have a previous treaty with *England*, for regulating our commerce, and other concerns with that nation.

*And further it is Resolved,*

That this Parliament will proceed to make such limitations and conditions of government, for the ratification of our constitution, as may secure the religion, liberty, and independency of this nation, before they proceed to the said nomination. The first Part of this resolution was proposed by the Duke of *Hamilton*,

*milton*, and the latter by the Earl of *Rothefs*. The same day the Duke of *Atbol* moved, that his Grace the Lord Commissioner would be pleased to write to her Majesty, to send down the persons who were witnesses in the late Plot, and all the papers relating to the same, that that affair might be examined to the bottom, and those who were unjustly and falsely accused might be vindicated, and those who are guilty punished according to their demerits. Whereupon the Lord Chancellor declared, that his Grace had written, and would write again on that subject.

The 19th, the Earl of *Marchmont* made a speech to this effect, that since the house had resolved not to fall immediately upon settling the succession, it was highly reasonable to make an act to exclude all Popish successors, as the most effectual means to secure the peace of this kingdom. The Duke of *Hamilton* said thereupon, that it was not now a proper season to answer that proposal, but that it should be answered another time. This occasioned some debates, and the Earl pretended that it was contrary to the custom of Parliament to interrupt a member, but nothing was resolved thereupon. The same day the Duke of *Hamilton* moved for a two months cess, for the present subsistence of her Majesty's forces, and the Lord-Justice Clerk moved for a supply for fourteen months, payable in two years. These two motions were taken into consideration the 21st, and it was carried by sixteen votes for the latter; but on the 25th, when the act of supply was again taken into consideration, and an additional clause about the security of the kingdom was offered to be added to the act of supply, after a debate thereon, the following resolutions were offered by the Lord *Rofs*.

*Resolved*,

*Resolved,*

That the Parliament will proceed to grant two months supply for subsisting her Majesty's forces, and as soon the act of Security, now read, has got the royal assent, will give four months more. This motion being opposed, the Earl of *Roxborough* presented the following resolution as an expedient, *viz.*

*Resolved,*

That there be a first reading marked on the act of security, and that both the act, and that for the supply, be without being farther proceeded on, until his Grace, her Majesty's Commissioner, receive instructions as to the act of security, it being then free to the Parliament to proceed to the acts jointly or separately, as they shall think fit. This *Resolve* was approved, and the act of security had a first reading marked thereon. The 27th the Parliament adjourned to the 3d of *August*, expecting by that time that the Commissioner would have received her Majesty's instructions on the said act of security.

On the 5th of *August*, the act for the security of the kingdom, in case of her Majesty's death without issue, and that for a supply of six months cess, had the royal assent; the first of which, by reason of the singularity of it, shall be inserted.

OUR Sovereign Lady the Queen's Majesty, with advice and consent of the Estates of Parliament, doth hereby statute and ordain, that in the event of her Majesty's death, or of the death of any of her Majesty's heirs and successors, Kings or Queens of this realm, this present Parliament, or any other Parliament that shall be then in being, shall not be dissolved by the said death, but shall, and is hereby required and ordained, assembled, to sit and act in

manner

*Scotch act of security.*



manner after-mentioned, notwithstanding of the said death.

And if the said Parliament shall be under adjournment the time of the said death, it shall notwithstanding meet precisely at *Edinburgh* the 20th day after the death aforesaid, excluding the day thereof, whether the day of the said adjournment be sooner or later.

And it is farther statuted and ordained, that in case there shall be no Parliament in being at the time of the said death, then the Estates or Members of the last preceding Parliament, without regard to any other Parliament that may possibly be indicted, but never met, nor constitute, shall meet at *Edinburgh* on the 20th day after the said death, the day thereof excluded.

And farther providing, that in all or any of the said cases, if there shall happen to be any vacancy of a member, by reason of death or promotion, the Barons or Burghs concerned, shall have power to chuse and supply the said vacancy in the accustomed manner.

As likewise, that in all or any of the said cases, no person who hath been, is, or shall be then a Papist, and hath not purged himself from Popery, by taking the *Formula* set down in the third act of the Parliament 1700, before the said death, shall be capable to be a member of, or to elect, or be elected to the said meeting of the Estates in Parliament. And sicklike, That no *Englishman*, or foreigner, having a *Scotch* title; and not having an estate of 12000*l.* yearly rent within this kingdom, shall in the event aforesaid, have place and vote in the said meeting of Estates.

And the said Estates of Parliament appointed, in case of the death aforesaid, to continue or meet as above, are hereby authorized and impowered, to act and administrate the government in manner after-mentioned ;

mentioned; that is, that upon the death of her Majesty, leaving heirs of her own body, or failing thereof, lawful successors designed or appointed by her Majesty, and the Estates of Parliament, upon the death of any succeeding King or Queen leaving heirs or successors, as said is, the said Estates of Parliament are authorized and impowered, after having read to the heir or successor the claim of right, and desired them to accept the government in the terms thereof, to require of, and administrate to the said heir or lawful successor, by themselves, or such as they shall commissionate, the coronation-oath, and that with all convenient speed, not exceeding thirty days after the meeting of the said Estates, if the said heir or successor be within the isle of *Britain*, or if without the same, not exceeding three months after the said meeting, in order to the exercising the royal power, conform to the declaration of the said Estates contained in the claim of right.

As also in the case of the said heir or successor, their being under age, which, as to the exercise of the government, is hereby declared to be, until their attaining to seventeen years compleat, to provide for, order and settle, within the space of sixty days after the said meeting, a Regency for the kingdom, until the said heir or successor take the coronation-oath, and do actually enter upon the exercise of the government; the Regent or Regents to be appointed always having the claim of right read to him or them, as above, and he or they taking at his or their entry the coronation-oath, and to continue to sit and act for the space of three months, unless they be sooner lawfully adjourned or dissolved by the said heir or successor, being entred, or by the Regent or Regents lawfully settled as said is.

And farther, upon the death of her Majesty without heirs of her body, or a successor lawfully designed or appointed, as above, or in the case of any other King or Queen thereafter succeeding, and  
deceasing

deceasing without lawful heir or successor, the aforesaid Estates of Parliament convened, are thereby authorized and impowered, to nominate and declare the successor to the Imperial crown of this realm, and to settle the succession thereof upon the heirs of the said successor's body; the said successor and the heir of the successor's body being always of the royal line of *Scotland*, and of the true Protestant religion.

Providing always, that the same be not the successor to the crown of *England*, unless in this present session of Parliament, or any other session of this, or any other ensuing Parliament during her Majesty's reign, there be such conditions of government settled and enacted, as may secure the honour and sovereignty of this crown and kingdom, the freedom, frequency and power of Parliaments, the religion, and trade of the nation, from *English*, or any foreign influence, with power to the said meeting of Estates to add such further conditions of government, as they shall think necessary, the same being consistent with, and no ways derogatory from those which shall be enacted in this, and any other session of Parliament during her Majesty's reign.

And it is hereby declared, that the said meeting of the Estates shall not have power to nominate the said successor to the crown of this kingdom, in the event above expressed, during the first twenty days after their meeting, which twenty days being elapsed, they shall proceed to make the said nomination with all convenient diligence.

And it is hereby expressly provided and declared, that it shall be high-treason for any person or persons to administrate the coronation-oath, or be witnesses to the administering thereof, but by the appointment of the Estates of Parliament in manner above mentioned, or to own or acknowledge any person as King or Queen of this realm, in the event of her Majesty's decease, leaving heirs of her body, until

until they have sworn the coronation-oath, and accepted the crown in the terms of the claim of right; and in the event of her Majesty's decease without heirs of her body, till they swear the coronation-oath, and accept of the terms of the claim of right, and of such other conditions of government as shall be settled in this, or any other ensuing Parliament, or added in the said meeting of Estates, and be thereupon declared and admitted as above, which crime shall be irremissible, without consent of Parliament.

And because in the aforesaid interval of twenty days, betwixt the said death and meeting of Estates of Parliament, in case there be no Parliament assembled for the time, it is necessary that the administration of the government be provided for in that interim. Therefore it is hereby declared, that in case of the death of her Majesty, or of any succeeding King or Queen of this realm, in all or any of the events above-mentioned; the aforesaid administration shall be in the hands of such of the members of the said Estates of Parliament, and such Members of the Privy-council last in being, as shall be at *Edinburgh* at the time of the said death, or shall come to *Edinburgh* before the aforesaid twentieth day, and shall meet in the Parliament-house there, which members of the Estates, and the said members of the Privy-council, are hereby impowered to sit and act in the said interim, for preserving the peace and quiet of the kingdom allendarly, and till the said meeting of Estates, and no longer, thirty of the said members of the Estates, and members of the former Council, being a *Quorum*, the plurality being always of the Estates who were not of the former Council.

And it is hereby further statuted and ordained, that all commissions granted to the officers of Estate, Lords of Treasury and Exchequer, president of the Privy-



Privy-Council, and all other civil commissions that are now granted during pleasure, shall, by the decease of the King or Queen reigning, become null and void, excepting Sheriffs, Stewards and Justices of the Peace, in their respective bounds.

And for the further security of this kingdom, her Majesty, with advice and consent aforesaid, statutes and enacts, that the whole protestant heretors, and all the burghs within the same, shall forthwith provide themselves with fire-arms for all the sensible men, who are protestants, within their respective bounds, and those of the bore proportioned to a bullet of fourteen drop weight running; and the said heretors and burghs are hereby impower'd and ordained, to discipline and exercise their said sensible men, once in the month at least, the said heretors always taking the oath of allegiance and assurance; as also such heretors or sensible men who are suspected of popery, are hereby appointed, when required, to take the *Formula* mentioned in the act of Parliament, 1700. and that before the Sheriff of the shire, or any other judge within whose jurisdiction they reside.

And it is hereby likewise statuted and ordained, That upon the decease of her Majesty, or any of her heirs or successors, the commissions of all officers of the standing forces above a Captain, shall immediately become void and null; and that the Captains of the several troops and companies, and the Lieutenants of those who shall have belonged to the Colonels, Lieutenant-Colonels and Majors, do continue to command their respective troops and companies, without extending their command any farther, under pain of Treason, till further orders from the said Estates or Committee in the interval.

And further, her Majesty, with advice and consent aforesaid, requires and ordains all officers and soldiers, which shall happen to be in daily pay at the time of the decease aforesaid, to continue in, or immediately

immediately repair to their respective garrisons and quarters, and not to remove from thence, but by order of the said estates or Committee above-mentioned, upon pain of treason.

And, lastly, her Majesty, with advice and consent aforesaid, rescinds, casses and annuls the seven-teenth act of the session of the Parliament, 1696. and all other laws and acts of Parliament, in so far as they are inconsistent with this act.

Upon occasion of passing this act; his grace the Marquess of *Tweddale*, her Majesty's High Commissioner, made the following speech to the Parliament.

*My Lords and Gentlemen,*

AT your sitting down, her Majesty in her gracious letter recommended to you two things, which she thought most necessary for your own quiet and security, as well as for that of her government; the settling the succession in the protestant line, and the providing for the subsistence of the forces, the funds last given for that end being then exhausted. The first of these you have not thought fit for your interest to do at this time; I heartily wish you may meet with an opportunity for it more for your advantage at another. The other all of you seemed most ready and willing to go into, as witness the several motions and resolves made thereanent, but withal shew'd strong inclinations for an act of security, as absolutely necessary. I told you then, as I had done at first, that I had been fully impower'd; and instructed not only as to that, but many other things for your good, but upon the alteration of circumstances, had not now the liberty to make use of those powers even as to that, till I had acquainted her Majesty, and knew her mind, which I would do, and use my utmost interest to procure it favourable, which was

High Com-  
missioner's  
Speech to  
the Parlia-  
ment.

‘ the true reason of your long adjournment, and  
 ‘ not what was insinuated by some, who ought to  
 ‘ have known me better, the character I have in  
 ‘ the world being, I hope, above so mean a re-  
 ‘ flection.

‘ And now, *My Lords and Gentlemen*, I can tell  
 ‘ you that from her Majesty’s innate goodness and  
 ‘ gracious disposition towards you, it hath been more  
 ‘ easy for me, and some other of her servants, to  
 ‘ prevail with her, than, perhaps, was by others  
 ‘ expected; so that you have an act of security suf-  
 ‘ ficient for the ends proposed: And it is hoped at  
 ‘ the same time you will perfect that of supply,  
 ‘ which you your selves seem convinced to be abso-  
 ‘ lutely necessary at this time, and without which  
 ‘ neither the forces can be kept on foot, nor any  
 ‘ frigates maintained for guarding our coasts, and  
 ‘ securing our trade, both which now lying before  
 ‘ you, I hope you will go presently about, that  
 ‘ when finished they may have the royal assent,  
 ‘ which I am ready to give, and thereafter you  
 ‘ may have time to proceed to other business rela-  
 ‘ ting to trade, or your other concerns, where-  
 ‘ in I shall be willing to comply with your de-  
 ‘ sires, so they be within the bounds of my In-  
 ‘ structions.

But what his grace might expect of them by way  
 of provision for the subsistence of the army, they  
 made but slow paces therein, but spent most of their  
 time upon the publick accounts, and the most re-  
 markable of their proceedings upon that head was,  
 that on the 11th they read the first four accounts of  
 receipts and disbursements; and as to the fourth  
 observation by the commissioners, for provision for  
*English* forces, they found that to be an article due  
 by *England*, and the sum mentioned in the fifth ob-  
 servation the like, and ordered the clerks of the  
 treasury to produce the instructions of the said  
 fifth

fifth article, against the next day of meeting : So that the time being spun out to the 27th, not very much to his Grace's satisfaction, or, perhaps, to the Parliament it self, they were adjourned to the 7th of *October*, upon which occasion the Lord High Commissioner made the following speech.

*My Lords and Gentlemen,*

**Y**OU have now sat long, and, I think, you cannot complain that you have been cut short by frequent adjournments or short seditious. In this time more might have been done ; however, some good laws are passed, and one in particular, which gives sufficient evidence of the disposition her Majesty was in to have gratified you in whatever was reasonable. I advertised you lately, that you had not much longer to sit, and though I cannot but say the time you have had since has been very usefully employed, yet, if there had been more dispatch made, some of those good Laws which are now before you might have passed ; but now I must tell you, that I am not allowed to give you any more time, her Majesty thinking a short recess necessary at present, so it will not be long till you may have another opportunity of doing what still remains fit to be done ; for no disappointment her Majesty hath met with can alter, in the least, her favourable disposition towards this her ancient Kingdom.

### *Farther PROCEEDINGS of the Scotch Parliament.*

**T**HE *Scotch* Parliament met again on the 28th of *June*, 1705, when his Grace *John* Duke of *Argyle*, Her Majesty's High Commissioner, went to the Parliament-House, where his Grace's Commission



was read, and recorded; after which a Commission to *James* Earl of *Seafield* to be Chancellor, Commissions to *William* Marquess of *Annandale*, and *Hugh* Earl of *Loudoun*, to be Secretaries of State, *David* Earl of *Glasgow*, to be Lord Treasurer Deputy, Sir *James* *Murrey* of *Philiphaugh* to be Clerk Register, and *Adam* *Ormiston*, to be Lord Justice Clerk, were read and recorded as usual. Then they adjourned to the 3d Instant, when they met again, and her Majesty's Letter to them was read as followeth: And his Grace the Lord Commissioner and the Lord Chancellor made the following speeches.

## ANNA REGINA.

*My Lords and Gentlemen,*

Queen's  
Letter to  
the Scotch  
Parliament  
read.

**I**T hath been our great care and concern ever since our accession to the crown, to preserve the peace, and promote the true interest and advantage of that our ancient Kingdom; and above all, to have your present establishment so secured, that both you, and after ages may reap the benefit thereof.

You are now again met in Parliament, and no doubt, with a full view of all your present circumstances, which we heartily wish may be seconded with such endeavours on your part, as may best accomplish what we so really design.

In your last meeting, we recommended to you with the greatest earnestness, the settling of the succession of that our ancient kingdom in the protestant line, and several things having since happen'd, which shew the great inconveniency of this matter's continuing in suspense, we cannot but at present most seriously renew the recommendation of this settlement, as being convinced of the growing necessity thereof, both for the preservation of the protestant religion, and the peace and safety

of

of all our dominions, and for defeating the designs, and attempts of all our enemies. And to prevent any objections to the said settlement, that can be suggested from the views or fears of future inconveniences that may happen to that our kingdom from thence, we shall be ready to give the royal assent to such provisions and restrictions, as shall be found necessary and reasonable in such a case; and therefore we must still leave it upon you as most necessary for all the ends already mentioned, that you go to the settlement of the succession before all other business.

We are fully satisfied, and doubt not but you are, that great benefits will arise to all our subjects by an union of *Scotland* and *England*, and that nothing will contribute more to the composing of differences, and extinguishing the heats that are unhappily raised and fomented by the enemies of both nations, than the promoting of every thing that tends to the procuring the same. Therefore we earnestly recommend to you to pass an act for a commission to set a treaty on foot between the kingdoms, as our Parliament of *England* has done, for effectuating what is so desirable, and for such other matters and things as may be judged proper for our honour, and the good and advantage of both kingdoms for ever; in which we shall most heartily give our best assistance.

The supplies granted by the Parliament for maintaining the forces, with the forts, garrisons and frigates, are now at an end, and the same being still necessary to be maintained; as likewise that the magazines of arms and ammunition be duly furnished, for the peace and security of the kingdom, especially now in time of war, we doubt not but you will provide the supplies needful, in such manner as may be easy and effectual.

‘ We have named the Duke of *Argyle* to be our  
 ‘ Commissioner, to represent our person in this session  
 ‘ of Parliament, as one, of whose capacity and zeal  
 ‘ for our service, and the kingdom’s good and advantage,  
 ‘ we are sufficiently assured, and no less hopeful  
 ‘ that he will be to you acceptable: We have fully  
 ‘ empowered him to declare our firm resolution to  
 ‘ maintain the government both in church and state,  
 ‘ as by law established, and likewise to consent to  
 ‘ such further laws as shall be thought needful  
 ‘ for that end.

‘ We have also empower’d him to give the royal  
 ‘ assent to such good laws, as shall be concluded for  
 ‘ the advancement of piety, and discouragement of  
 ‘ immorality, for the better encouraging and improving  
 ‘ of trade and manufacture, the further securing  
 ‘ of private rights and conveyances, and for  
 ‘ promoting the more easy and speedy administration  
 ‘ of justice; and generally, for what may be found  
 ‘ for the good and advantage of the kingdom. In  
 ‘ all such, and whatever else may contribute for the  
 ‘ happiness and satisfaction of our people, you shall  
 ‘ have our ready and chearful concurrence: And so  
 ‘ we bid you heartily farewell.

*Given at our court at Windsor Castle, the 18th of  
 June, 1705. and of our reign the 4th year.*

By her Majesty’s Command.

DAVID NAIRNE.

His Grace, my Lord Commissioner, made afterwards the following speech.

*My Lords and Gentlemen,*

Lord high  
 Commissioner’s  
 speech to  
 the Scotch  
 Parliament.

‘ **H**ER Majesty has in her most gracious letter  
 ‘ expressed so much tenderness and affection  
 ‘ towards this nation, in assuring you, that she will  
 ‘ maintain the government, as established by law,  
 ‘ both

‘ both in church and state; and acquainting you that  
 ‘ she has been pleased to give me such power, to pass  
 ‘ such acts as may be for the good of the nation,  
 ‘ that were it not purely to comply with custom I  
 ‘ might be silent.

‘ Her Majesty has had under her consideration the  
 ‘ present circumstances of this kingdom, and out of  
 ‘ her extream concern for its welfare, has been gra-  
 ‘ ciously pleased to recommend to you two expe-  
 ‘ dients, to prevent the ruin, which does but too plain-  
 ‘ ly threaten us: In the first place, your settling the  
 ‘ succession in the protestant line, as what is abso-  
 ‘ lutely and immediately necessary to secure our  
 ‘ peace, to cool those heats which have with great  
 ‘ industry and too much success, been fomented  
 ‘ among us, and effectually disappoint the designs  
 ‘ of all our enemies. In the second, a treaty with  
 ‘ *England*, which you your selves have shown so  
 ‘ great an inclination for, that it is not to be sup-  
 ‘ posed it can meet with any opposition.

‘ The small part of the funds which were appro-  
 ‘ priated, in your last meeting, for the army, are now  
 ‘ at an end, and I believe every body is satisfied of  
 ‘ how great a use our frigates have been to our trade;  
 ‘ and it is fit to acquaint you, our forts are ruinous,  
 ‘ and our magazines empty. Therefore I do not  
 ‘ doubt but your wisdom will direct you to provide  
 ‘ suitable supplies.

*My Lords and Gentlemen,*

‘ I am most sensible of the difficulties that at-  
 ‘ tend this post, and the loss I am at by my want  
 ‘ of experience in affairs; but I shall endeavour to  
 ‘ make it up by my zeal and firmness in serving  
 ‘ her Majesty, and the great regard I shall have  
 ‘ to whatsoever may be for the good of my  
 ‘ country.

G g 4.

Then



Then my Lord Chancellor spoke to the assembly in the following words.

*My Lords and Gentlemen,*

Lord Chan-  
cellor's  
speech to the  
Scotch Par-  
liament.

‘ **H**ER Majesty in her most gracious letter, and  
‘ my Lord Commissioner his Grace, in his  
‘ speech, do propose those things to your considera-  
‘ tion, which are of the greatest importance for the se-  
‘ curity of your religion and liberties; and her Ma-  
‘ jesty is most willing to do all that is in her power,  
‘ to promote the happiness and prosperity of all her  
‘ subjects.

‘ For these ends, her Majesty doth, with great ear-  
‘ nestness, continue to recommend to you the settle-  
‘ ment of the succession to the crown in the pro-  
‘ testant line, as the surest measure for preserving all  
‘ that is valuable to you, with regard either to your  
‘ sacred or civil concerns: So long as this is delayed,  
‘ the enemies of our present establishment will conti-  
‘ nue their bad designs, and be ready to take the first  
‘ opportunity to disturb the publick peace; and when  
‘ can you enter upon the deliberation of this mat-  
‘ ter, with greater advantage than now in her Ma-  
‘ jesty’s own time; and when you have assurances  
‘ from her of all encouragement, and that she is  
‘ ready to grant such limitations and conditions of  
‘ government, with regard to the successor, as can be  
‘ reasonably proposed, and will give her royal con-  
‘ currence in every thing that can make this settle-  
‘ ment advantageous to this nation.

‘ Her Majesty doth also in her royal letter, with  
‘ great concern, signify her design to prevent all diffe-  
‘ rences that may happen between this kingdom and  
‘ that of *England*; and proposes the only expedient in  
‘ this matter, the setting on foot a treaty of union,  
‘ and of such other matters and concerns as may be  
‘ for her Majesty’s honour, and the good and ad-  
‘ vantage of both kingdoms. It is unquestionably the  
‘ interest

‘ interest of both nations, that they be more closely  
 ‘ united; and that there be an entire communica-  
 ‘ tion of advantages and privileges, and that they  
 ‘ both had the same interest, which would make this  
 ‘ island secure at home, and formidable abroad; and  
 ‘ you are assured of her Majesty’s royal concurrence  
 ‘ and assistance, to make this treaty effectual, to the  
 ‘ mutual advantage of both kingdoms.

‘ You will certainly think it reasonable to grant the  
 ‘ needful supplies for maintaining the forces and fri-  
 ‘ gates, and for other uses mentioned in her Majesty’s  
 ‘ letter; these being so necessary now in the time of  
 ‘ war, for the support of her Majesty’s government,  
 ‘ and for the defence of this nation, against the at-  
 ‘ tempts and designs of our enemies.

*My Lords and Gentlemen,*

‘ My Lord Commissioner being fully instructed by  
 ‘ her Majesty, in every thing that concerns the good  
 ‘ of this nation, you have the clearest and greatest  
 ‘ evidence of her Majesty’s most tender care for the  
 ‘ happiness of her people. I am therefore hopeful  
 ‘ you will improve this most desirable opportunity,  
 ‘ for promoting of piety, for encouraging our trade,  
 ‘ for preserving of your peace, and for doing all that  
 ‘ may be for the mutual satisfaction of her Majesty  
 ‘ and her subjects.

These speeches and other necessary *formula’s* being  
 over, on the 5th the following motions were made. Proceedings  
of the Scotch  
Parliament.

The first by the Marquess of *Annandale*, one of the  
 Secretaries of State, thus, proposed, That the Par-  
 liament go into consideration of such limitations and  
 conditions of government, as shall be judged proper  
 for the next successor in the protestant line.

The second by the Earl *Marischal*, thus, Re-  
 solved, that this house, before all other affairs, will  
 make such a regulation of the trade and coin of  
 this

this kingdom, as may be most proper for the advantage of this nation.

The third by the Earl of *Marr*, thus, Resolved, that this house, will proceed preferable to all other business, to take into their consideration the nation's circumstances, as to *England*, and how to enter into a treaty with them.

This last being seconded by few, his Lordship thought fit to withdraw it till another time; but the house fell into a debate of six hours upon the two first motions, and at last it came to the question, to proceed to the consideration of coin and trade, or to limitations first; and the first was carried by about 100. Then a second question was put, whether the coin, &c. should be taken into consideration by way of resolve, which excluded all other business till that be determined, or by way of proposal, which admitted of other business; this was carried too by a great majority.

The 10th, an act discharging the importation of corn from *England* and *Ireland*: And an act discharging the importation of *Englisk*, *Irish*, and all foreign butter and cheese, were read.

The 17th, they came to the following resolves touching the succession. Resolved, that this Parliament will not proceed to the nomination of a successor, till we have had a previous treaty with *England* in relation to our commerce, and other concerns with that nation. And further it is resolved, that this Parliament will proceed to make such limitations and conditions of government, for the rectification of our constitution, as may secure the liberty, religion and independency of this kingdom, before they proceed to the said nomination.

The 26th, Mr. *Fletcher* of *Salton* presented an act for separating from the crown, and annexing to the property of landed men, all mines of gold and silver within the bounds belonging to them. The 31st of *July*, the said Mr. *Fletcher* of *Salton*, gave in the following

following resolve: *Resolved*, ‘ That in pursuance of  
‘ the resolution made last session of Parliament, and  
‘ now again confirmed in this, the Parliament, not-  
‘ withstanding the unneighbourly and injurious usage  
‘ received, by an act lately passed in the Parliament of  
‘ *England*, intituled, an act for the effectual securing  
‘ of the kingdom of *England*, &c. is still willing, in  
‘ order to a good understanding between the two na-  
‘ tions, to enter into a treaty with *England*; but it is  
‘ not consistent with the honour and interest of this  
‘ independent kingdom to make any act, or appoint  
‘ Commissioners for that end, until the Parliament of  
‘ *England* do propose the same in a more neighbour-  
‘ ly manner.

‘ *Resolved*, To proceed to the necessary acts for  
‘ regulating our trade, the rectification of our pre-  
‘ sent constitution, and the limitations, in the terms  
‘ of our first resolve.

Resolve presented by the Lord *Bellhaven*.

‘ That we will take into consideration the  
‘ rectification of our constitution, and the limi-  
‘ tations upon the protestant successor, previous  
‘ to the consideration of any treaty with *Eng-  
‘ land*.

An act for free voting, presented by the Lord *An-  
struther*, thus,

‘ The estates of Parliament considering the evil  
‘ consequences that may rise by Officers of the cu-  
‘ stom or excise, Collectors or Surveyors, being  
‘ members of Parliament, therefore our Sovereign La-  
‘ dy the Queens Majesty, with consent of the estates  
‘ of Parliament, to prevent all jealousies, and give full  
‘ satisfaction to all her good subjects, statutes, enacts  
‘ and declares, that hereafter no Officer of the  
‘ customs, or excise, Collector or Surveyor, nor  
‘ manager of the customs, nor farmer of any  
‘ branch of her Majesty’s revenue, directly or indi-  
‘ rectly, shall be members of Parliament; and de-  
‘ clares



' clares this act shall have its commencement the  
' next Parliament that shall be called.

The whole day was spent upon the above mentioned resolves, and upon debate, whether to go first upon the consideration of a treaty of an union with *England*, or upon limitations, it was carried for limitations.

On the 11th of *July*, the Parliament having taken a council of trade under consideration, upon a debate whether the nomination of the members of it should be left to the Queen, or whether they should be named by the Parliament, it was carried they should be named by the Parliament. On the 14th the council of trade being 21 in number, *viz.* Seven of each estate, were named in Parliament, each estate naming seven of their own members, excluding all farmers and collectors of the revenue. The 16th the overture of an act for chusing Officers of State, Privy Council, Treasury and Exchequer, in case of her Majesty's decease, without heirs of her body, was read; and also an act for a triennial Parliament; and both were marked a first reading. They proceeded also to consider the act about the way of chusing Officers of State, &c. in case of her Majesty's decease without heirs of her body, and after debate upon the clause for naming the said Officers, it was put to the vote, if the nomination of the Officers of State, &c. should be by the King in Parliament, with the advice, consent, and approbation of the estates, or if the nomination should be by the estates of Parliament, and carried that the nomination should be by the estates of Parliament.

Moved, that the nomination upon the death of any of the Lords of session or justiciary, be in the same manner as the Officers of State, and added to this act. Moved also, that the same be considered by a separate act, and after reasoning, agreed, that the Lords of session and justiciary be named in the same manner as the Officers of State, and that the commissions

commissions to be granted to them upon any vacancy shall be during life.

On the 21<sup>st</sup> the Parliament proceeded to the further consideration of the act, about the way of chusing Officers of State, in case of her Majesty's decease without heirs of her body, and moved, that a clause be added, that in the event aforesaid there be three Presidents of the session chosen and named by the Parliament, to preside by turns for the space of two months only, and after reasoning it was put to the vote, add the clause or not, and carried in the negative. Then the act being read, it was put to the vote, approve the act or not, and carried approve.

Some days before, the following draught of limitations was given in by Mr. *Fletcher* of *Salton*, upon which there were several debates and speeches.

Overtures for limitations on the successors of her Majesty deceasing without heirs of her body, who shall be likewise Kings of *England*.

## I.

That elections shall be made at every *Michaelmas* Mr. Fletcher's draught of limitations. head court for a new Parliament every year, to sit the first of *November* next following, and adjourn themselves from time to time till next *Michaelmas*. That they choose their own president, and that every thing shall be determined by balloting in place of voting.

## II.

That so many lesser Barons shall be added to the Parliament, as there has been noblemen created since the last augmentation of the number of Barons; and that in all time coming, for every Nobleman that shall be created, there shall be a Baron added to the Parliament.

## III.

That no man have a vote in Parliament but a Nobleman or elected member.

## IV.

## IV.

That the King shall give the royal assent to all laws offered by the estates, and that the President of the Parliament be empowered by his Majesty to give the royal assent in his absence, and have 10 *l.* *sterling* a day salary.

## V.

That a Committee of thirty one members, of which nine to be a *Quorum*, chosen out of their own number by every Parliament, shall, during the intervals of Parliament, under the King, have the administration of the government, be his council, and be accountable to the next Parliament, with power in extraordinary occasions to call the Parliament together; and that in the said council all things be determined by balloting in the place of voting.

## VI.

That the King without consent of Parliament, shall not have the power of making peace and war, or that of concluding any treaty with any other State or Potentate.

## VII.

That all places and offices, both civil and military, and all pensions formerly conferred by our King, shall ever after be given by Parliament.

## VIII.

That no regiment nor company of horse, foot, or dragoons, be kept on foot in peace or war, but by consent of Parliament.

## IX.

That all the sensible men of the nation, between sixty and sixteen, be armed with bagonets and firelocks, all of a calibre, and continue always provided in such arms, with ammunition suitable.

## X.

## X.

That no general indemnity, nor pardon for any transgressor against the publick, shall be valid without the consent of Parliament.

## XI.

That the fifteen Senators of the college of justice, shall be incapable of being members of Parliament, or of any other office, or any pension, but the salary belonging to their place to be increased as the Parliament shall think fit, though the office of President be in three of their number, to be named by Parliament, and that there be no extraordinary Lords; and also that the Lords of the justice-court shall be distinct from those of the session, and under the same restrictions.

## XII.

That if any King break in upon any of these conditions of government, he shall by the estates be declared to have forfeited the crown.

On the 22d the Parliament proceeded to consider the act for a triennial Parliament; and after some reasoning whether this act should take effect during the Queen's reign, or not till the reign of the successor, it was put to the vote, and carried that it should take effect during her Majesty's reign. Moved, that this Parliament continue only for one year after the date of the act; and also moved, that it may continue for three years after; being put to the vote, it was carried that it may continue three years. Moved, that by the act all farmers and collectors of her Majesty's customs and excise, and surveyors, be declared to be incapable to be chosen members of Parliament. Then the whole act being read, it was put to the vote, approve or not, and carried approve.



# PROCEEDINGS of the English Parliament.

On the 25th of *October* the Parliament met, and the House of Commons having chosen *John Smith*, Esq; for their Speaker, her Majesty made the following Speech to both Houses.

Queen's  
Speech in  
Parliament.

*My Lords and Gentlemen;*

I Have been very desirous to meet you as early as I thought you might be called together without inconvenience to your selves.

And it is with much satisfaction I observe so full an appearance at the opening of the Parliament, because it is a ground for me to conclude you are all convinced of the necessity of prosecuting the just war, in which we are engaged, and therefore are truly sensible that 'tis of the greatest importance to us to be timely in our preparations.

Nothing can be more evident, than that if the *French* King continues master of the *Spanish* monarchy, the balance of power in *Europe* is utterly destroyed, and he will be able in a short time to engross the trade, and the wealth of the world.

No good *Englishman* could at any time be content to sit still, and acquiesce in such a prospect: And at this time we have great grounds to hope, that by the blessing of God upon our arms, and those of our Allies, a good foundation is laid for restoring the monarchy of *Spain* to the House of *Austria*; the consequences of which will not only be

' be safe and advantageous, but glorious for *Eng-*  
' *land*.

' I may add, we have learnt by our own experi-  
' ence, that no peace with *France* will last longer  
' than the first opportunity of their dividing the  
' Allies and of attacking some of them with advan-  
' tage.

' All our Allies must needs be so sensible this is  
' the true State of the case, that I make no doubt but  
' measures will soon be concerted, as that, if we be  
' not wanting to our selves, we shall see the next  
' campaign begin offensively on all sides against our  
' enemies, in a most vigorous manner.

' I must therefore desire you, *Gentlemen of the*  
' *House of Commons*, to grant me the supplies which  
' will be requisite for carrying on the next year's  
' service both by sea and land, and at the same time  
' to consider, that the giving all possible dispatch  
' will make the supply it self much more effectual.

' The firmness and conduct which the Duke of  
' *Savoy* has shewn amidst extreme difficulties, is be-  
' yond example.

' I have not been wanting to do all that was pos-  
' sible for me, in order to his being supported.

' I ought to take notice to you, that the King of  
' *Prussia*'s troops have been very useful to this end,  
' your approbation of that treaty last sessions, and  
' the encouragement you gave upon it, leave me  
' no doubt of being able to renew it for another  
' year.

' I take this occasion to assure you, that not only  
' whatever shall be granted by Parliament for bear-  
' ing the charge of the war, shall be laid out for that  
' purpose, with the greatest faithfulness and manage-  
' ment: But that I will continue to add out of my  
' own revenue, all I can reasonably spare beyond  
' the necessary expences for the honour of the go-  
' vernment.

*My Lords and Gentlemen,*

‘ By an act of Parliament passed the last winter,  
 ‘ I was enabled to appoint Commissioners for this  
 ‘ kingdom, to treat with Commissioners to be im-  
 ‘ powered by authority of Parliament in *Scotland*,  
 ‘ concerning a nearer and more complete union be-  
 ‘ tween the two kingdoms, as soon as an act should  
 ‘ be made there for that purpose; I think it proper  
 ‘ for me to acquaint you, that such an act is lately  
 ‘ passed there, and I intend in a short time to cause  
 ‘ commissions to be made out, in order to put the  
 ‘ treaty on foot, which I heartily desire may prove  
 ‘ successful, because I am persuaded that an union of  
 ‘ the two kingdoms will not only prevent many in-  
 ‘ conveniencies, which may otherwise happen, but  
 ‘ must conduce to the peace and happiness of both  
 ‘ nations, and therefore I hope I shall have your as-  
 ‘ sistance in bringing this great work to a good con-  
 ‘ clusion.

‘ There is another union, I think my self obliged  
 ‘ to recommend to you in the most earnest and af-  
 ‘ fectionate manner, I mean an union of minds and  
 ‘ affections amongst our selves: It is that which  
 ‘ would above all things disappoint and defeat the  
 ‘ hopes and designs of our enemies.

‘ I cannot but with grief observe, there are some  
 ‘ amongst us, who endeavour to foment animosities,  
 ‘ but I persuade my self, they will be found to be  
 ‘ very few, when you appear to assist me in discour-  
 ‘ tenancing and defeating such practices.

‘ I mention this with a little more warmth, be-  
 ‘ cause there have not been wanting some so very ma-  
 ‘ licious, as even in print, to suggest the church of  
 ‘ *England*, as by law established, to be in danger at  
 ‘ this time.

‘ I am willing to hope, not one of my subjects  
 ‘ can really entertain a doubt of my affection to the  
 ‘ church, or so much as suspect that it will not be  
 ‘ my

‘ my chief care to support it, and leave it secure after me, and therefore we may be certain, that they who go about to insinuate things of this nature, must be mine and the kingdom’s enemies, and can only mean to cover designs which they dare not publicly own, by endeavouring to distract us with unreasonable and groundless distrust and jealousies.

‘ I must be so plain as to tell you, the best proofs we can all give at present of our zeal for the preservation of the church, will be to join heartily in prosecuting the war against an enemy, who is certainly engaged to extirpate our religion, as well as to reduce this kingdom to slavery.

‘ I am fully resolved, by God’s assistance, to do my part.

‘ I will always affectionately support and countenance the church of *England*, as by law established.

‘ I will inviolably maintain the toleration.

‘ I will do all I can to prevail with my subjects to lay aside their divisions, and will study to make them all safe and easy.

‘ I will endeavour to promote religion and virtue amongst them, and to encourage trade, and every thing else that may make them a flourishing and happy people.

‘ And they, who shall concur zealously with me in carrying on these good designs, shall be sure to find my kindness and favour.

On the 31st Instant, the House of Lords presented the following address to her Majesty.

‘ **W**E your Majesty’s most dutiful and loyal subjects, the Lords spiritual and temporal in Parliament assembled, beg leave to make our humble and sincere acknowledgments to your  
Lords address to the Queen.



‘ Majesty, for your most gracious speech to both  
 ‘ houses, which has opened the eyes and raised the  
 ‘ hearts of all your loyal subjects.

‘ Your Majesty is pleased to give us warning of  
 ‘ the danger of being so far deluded, as to depend  
 ‘ again on the faith of treaties, with an enemy, who  
 ‘ has never yet had any other regard to them, than  
 ‘ as they served the purposes of his interest and am-  
 ‘ bition; and to inform us, that no peace can be  
 ‘ lasting, safe and honourable, ’till the *Spanish* mo-  
 ‘ narchy be fixed in the house of *Austria*, and *France*  
 ‘ reduced to such a degree, that the balance of  
 ‘ power in *Europe* be again restored.

‘ We humbly concur with your Majesty in these  
 ‘ your wise and noble sentiments, and we faithfully  
 ‘ promise, that no danger shall deter us, nor any  
 ‘ artifices divert us, from doing all that is in our  
 ‘ power to assist your Majesty in carrying on the  
 ‘ war, till you shall be enabled to procure such a  
 ‘ peace for *Europe*.

‘ Your Majesty is graciously pleased to encourage  
 ‘ us with the hopes of a glorious campaign the next  
 ‘ year, and we humbly present our thanks to your  
 ‘ Majesty, for having wisely and providentially endea-  
 ‘ voured to concert such measures, as, by the good-  
 ‘ ness of God, may be a reasonable foundation for  
 ‘ those hopes: And we assure your Majesty, no-  
 ‘ thing on our part shall be wanting to make them  
 ‘ effectual.

‘ We rest confident, that all your Majesty’s Al-  
 ‘ lies, excited by your constancy and courage, and  
 ‘ fired by the example of a Prince, whom you have  
 ‘ been pleased to mention in so honourable a man-  
 ‘ ner, will make their utmost efforts to carry on the  
 ‘ cause of liberty, and bring this just and necessary  
 ‘ war to a speedy and happy conclusion.

May

*May it please your Majesty,*

‘ What you have already performed, and what you are still pursuing for the good of *Christendom*, discovers a greatness of mind equal to the most heroick of your predecessors.

‘ But we, who have the happiness to be your subjects, ought in the first place to admire in your Majesty, that tender and indulgent affection to your people, which you have shown from the beginning of your reign; that earnest desire to unite them among themselves, and to make them all easy, safe, and happy under your government; that steady zeal for the Church of *England*, as by law established; and, that compassion, for those who are so unhappy as to dissent from her: All which your Majesty having expressed at this time in so gracious and moving a manner, cannot but raise in us the most firm and lively resolutions, of promoting every thing you have thought fit to recommend.

‘ We assure your Majesty, we will do all we can to discountenance and defeat the designs and practices, of those who foment animosities among your people, and will ever shew the utmost detestation of those ungrateful and wicked men, who labour to dishonour your Majesty’s reign, and distract your subjects with unreasonable and groundless jealousies of dangers to the Church of *England*. We shall be ready to concur in all measures requisite to put a stop to the malice of these incendiaries. In the mean time we humbly advise and beseech your Majesty, to require and command your officers and ministers, to whom that part belongs, that they prosecute and punish them with the utmost rigour of law, as the most spiteful and dangerous enemies to the Church and State.

H h 3

‘ Your

‘ Your Majesty’s example is the shining ornament  
 ‘ of our church, which under the influence of your  
 ‘ happy government, encreases in honour and  
 ‘ esteem, not only at home but abroad. Your  
 ‘ unexampled bounty for the relief of the poor  
 ‘ clergy (which has been justly and universally ac-  
 ‘ knowledged and celebrated) is an undeniable evi-  
 ‘ dence of your concern for the dignity and ho-  
 ‘ nour of the church. And your Majesty’s care to  
 ‘ lay hold of every opportunity of declaring it from  
 ‘ the Throne, makes it impossible for any of your  
 ‘ subjects to entertain a real doubt of your zeal  
 ‘ for the church, as by law established.

‘ We beg leave to offer to your Majesty our most  
 ‘ sincere assurances, that we will not be wanting  
 ‘ in our utmost endeavours to reconcile and unite  
 ‘ all your subjects, and to extinguish those unhappy  
 ‘ animosities which have too much prevailed among  
 ‘ us, the effecting whereof seems to be the only hap-  
 ‘ piness wanting to compleat the blessing of your  
 ‘ reign, which we pray God may long continue,  
 ‘ and that you may see the fruit of all your Ma-  
 ‘ jesty’s gracious admonitions to your subjects, in  
 ‘ their hearty and entire union, and the happy ef-  
 ‘ fects of all your great designs abroad, in the well  
 ‘ established peace and liberty of *Europe*.

Her Majesty’s most gracious answer to the ad-  
 drefs.

My Lords,

Queen’s  
 Answer.

*I Return you my hearty thanks for your address, and I  
 assure you it is a great satisfaction to me, to find  
 you are so ready to concur in those things which I have  
 recommended to you.*

*The*

*The Commons address to the Queen.**Most gracious Sovereign,*

‘ **Y**OUR Majesty’s most dutiful and loyal sub-  
 ‘ jects, the Commons of *England* in Parliament Commons  
 ‘ assembled, are met together, with minds fully Address to  
 ‘ disposed to assist your Majesty, in compassing the the Queen.  
 ‘ great and glorious designs mentioned in your most  
 ‘ gracious speech to both houses of Parliament, for  
 ‘ which we beg leave to return our most hearty  
 ‘ thanks, and at the same time to congratulate the  
 ‘ glorious success of your Majesty’s arms, and those  
 ‘ of your Allies.

‘ We are fully convinced, that the balance of  
 ‘ power in *Europe* can never be restored, till the mo-  
 ‘ narchy of *Spain* is in the possession of the house of  
 ‘ *Austria*; and that no peace with *France* can be se-  
 ‘ cure and lasting, whilst the *French* King shall be  
 ‘ in a condition to break it; and therefore your faith-  
 ‘ ful Commons are fully resolved, effectually to enable  
 ‘ your Majesty to carry on the war with vigour, to  
 ‘ support your Allies, and make good such treaties  
 ‘ as your Majesty shall judge necessary to reduce the  
 ‘ exorbitant power of *France*.

‘ It is no small encouragement to your Commons,  
 ‘ cheerfully to grant the supplies necessary for those  
 ‘ great ends, to find a frugal Management, and a  
 ‘ just and prudent application of the publick  
 ‘ money.

‘ We cannot omit, upon this occasion, most thank-  
 ‘ fully to acknowledge your Majesty’s goodness, in  
 ‘ continuing to contribute out of your own revenue  
 ‘ to the expences of the war.

‘ We want words to express the deep sense we  
 ‘ have of the many blessings we enjoy under your  
 ‘ Majesty’s happy government. We are thoroughly  
 ‘ sensible of your affectionate care to support and  
 ‘ countenance the church of *England* as by law



‘ established, your resolution to maintain the toleration, and to encourage the trade, union, and welfare of your people.

‘ This being the happy condition of all your subjects, it is the greatest concern imaginable to us, to find your Majesty has so just reason to resent the ingratitude of some, who endeavour to foment animosities and divisions amongst us: And we cannot without indignation reflect, that there should be any so malicious as to insinuate, that the Church of *England*, as by law established, is, or ever can be in danger, for want of your Majesty’s care and zeal to support and maintain it: Your Majesty’s exemplary piety, your steady adherence to the Church of *England*, leave no room to doubt but that these suggestions proceed from your Majesty’s and the kingdom’s enemies; who, to cover their disaffection to the present establishment and administration, endeavour to distract your subjects with unreasonable and groundless distrusts and jealousies.

‘ Your Majesty may be assured, that your Commons will zealously concur in every thing that may tend to discourage and punish such incendiaries, and to disappoint your enemies both at home and abroad.

Her Majesty’s gracious answer.

Gentlemen,

Queen’s  
Answer,

*I Take very kindly the confidence you express in my care of the publick, and your concern for the occasion I have had to complain.*

*I return you my hearty thanks for the assurances of your support and assistance, which, by God’s blessing, I shall always endeavour to improve for the advantage and happiness of my people.*

This

This done, the Commons went vigorously on with the necessary supplies and other matters; and on the 13th of *November* resolved, that an address should be presented to her Majesty, to return her the thanks of the house, for her great regard of the good and welfare of both her kingdoms of *England* and *Scotland*; for her great care and endeavour to settle the succession of the kingdom of *Scotland*, in the house of *Hanover*, for preserving the peace, and promoting the union of the two kingdoms; and to assure her, that they would, to the utmost of their power, assist her Majesty to bring that great work to a happy conclusion, and likewise, that she would be graciously pleased to direct, that the whole proceedings of the last sessions of Parliament in *Scotland*, relating to the union of the two kingdoms, and the settlement of the succession of *Scotland*, in the house of *Hanover*, might be laid before that house; and having ordered an address to be presented to her accordingly, by such members of that house as were of her Privy-council, Mr. Secretary *Harley* acquainted them, that, that having been done according, her Majesty was pleased to answer, ‘ That she took very kindly the sense they expressed of her endeavours, to promote the Protestant succession, and the treaty of union with *Scotland*; and that she had given direction for complying with their address, and that they should have the state of that matter, as soon as it could conveniently be sent them. Another address of the Commons.  
Queen’s answer.

About this time, the Lord *Haverſham* having moved in the House of Peers, that the state of the nation should be taken into consideration. He, on the 15th, made the following speech to their Lordships.

My

Lord Ha-  
versham's  
speech in  
the house of  
Lords.

*My Lords,*

‘ IT may perhaps be expected, since I moved to you  
‘ the state of the nation, that I should say some what  
‘ to you upon this occasion: And tho’ I never labour-  
‘ ed under more difficulties than I do at present, yet  
‘ being conscious to my self of a heart as full of  
‘ loyalty and duty to her Majesty, and zeal for  
‘ her service, as is possible for any subject to have;  
‘ and knowing that the best way of preserving liber-  
‘ ty of speech in Parliament, is to make use of it, I  
‘ will mention three or four general heads to your  
‘ Lordships, and speak to them with a great deal of  
‘ freedom and plainness.

‘ The first thing I shall speak to, is the present  
‘ confederate war, in which we are engaged: And  
‘ because the best way of judging what we may rea-  
‘ sonably expect for the future, is to consider the  
‘ actions that are passed, give me leave a little to  
‘ take notice to your Lordships of the operations of  
‘ the last campaign: I shall not say much of our  
‘ forcing the *French* Lines, and our beating the  
‘ *French* troops afterwards, (tho’ that was a very  
‘ great and brave action) but because there was such  
‘ a mixture of victory and misfortune; and that this  
‘ is such a chequered piece, I purposely forbear ta-  
‘ king further notice of it.

‘ But there were two other actions, which I think  
‘ take in your whole campaign, the march of our  
‘ army to the *Moselle*, and the business of *Overisch*;  
‘ In both which, give me leave to say, (not to give it  
‘ a harder term) I think we were not used as we  
‘ might have reasonably expected. Our General,  
‘ with a great deal of conduct, cover’d Prince *Lewis*  
‘ of *Baden*’s army; nor can it be doubted, he might  
‘ easily have joined us if he had been pleased, with-  
‘ out the least danger from the *French*; which if he  
‘ had done, by the best account I could ever get,  
‘ (and I think I have a very true one) we had been at  
‘ least

‘ least 25000 stronger than the *French* there ; but  
‘ being disappointed of being joined by Prince  
‘ *Lewis*, and of the assistance we expected from him,  
‘ that great design proved abortive.

‘ The next was the business of *Overisch*, where, by  
‘ the conduct of my Lord Duke of *Marlborough*,  
‘ we had a fair opportunity of putting an end to the  
‘ war at once ; the *Dutch* held our hand, and would  
‘ not let us give the deciding blow.

‘ Thus ended your campaign, tho’ it began with  
‘ more promising hopes of success than this next I  
‘ believe will : You had then an enemy to deal with  
‘ whose Councils were distracted, whose troops were  
‘ broke, and the courage of his army sunk.

‘ From all this give me leave to conclude, that its  
‘ neither men nor money, courage nor conduct, that  
‘ are the only things necessary to carry on a confederate war.

‘ Those who command your army are men of  
‘ that bravery, and every common Soldier hath so  
‘ much courage, that no equal number of men in the  
‘ world, I think, can stand before them ; but let our  
‘ supplies be never so full and speedy, let our management be never so great and frugal, yet if it be  
‘ our misfortune to have Allies that are as slow and  
‘ backward, as we are zealous and forward, that hold  
‘ our hands, and suffer us not to take any opportunity that offers, that are coming into the field when  
‘ we are going into winter-quarters, I cannot see  
‘ what it is we are reasonably to expect.

‘ The next thing I shall take the liberty to speak  
‘ to, is the point of trade : Every one sees how our  
‘ Merchants go off daily, and how low the trade of  
‘ this nation at present is, I know. My Lords,  
‘ there is a word we are very fond of, which we call  
‘ the balance of power, but the *Dutch*, who are a very wise people, have a double view, and take as  
‘ much care of the balance of trade, as they do of  
‘ the balance of power ; and are as fearful of our  
‘ power



‘ power at sea, as of the power of *France* by land.  
 ‘ My Lords, the best knowledge of things is by  
 ‘ their causes; ’tis trade begets wealth, as wealth  
 ‘ begets power; and it seems very hard for *England*,  
 ‘ that while the *Dutch* live at peace under the pro-  
 ‘ tection of our arms, we, if we will have any part  
 ‘ of trade with them, must have it under the pro-  
 ‘ tection of their passes: But it will be yet much hard-  
 ‘ er, if, after their having the advantage of a tra-  
 ‘ ding war, we should make a tradeless peace.

‘ I know, my Lords, the *Dutch* generally complain  
 ‘ they are very poor; but give me leave to say, I  
 ‘ cannot see how they have been out of pocket one  
 ‘ shilling since this war, for they have more by re-  
 ‘ mittances, and money from *England*, than all the  
 ‘ money that goes out of their country to *Portugal*,  
 ‘ *Savoy*, and the *German* Princes.

‘ There is one thing more which I take to be of  
 ‘ the greatest importance to us all, ’tis this I had  
 ‘ chiefly in my intention, and with which I shall con-  
 ‘ clude what I have to say.

‘ But before I come to it, give me leave to take  
 ‘ notice of one thing to your Lordships. My  
 ‘ Lords, ’tis the happiness of *England*, and that  
 ‘ which ever did, and ever will keep the greatest  
 ‘ ministers in awe, that by the law, and custom  
 ‘ of Parliament, the meanest member of either house  
 ‘ has an undoubted right to debate on any subject, and  
 ‘ to speak his thoughts with all freedom, without  
 ‘ being liable to be called in question by any person  
 ‘ whatever, till the Parliament it self hath first taken  
 ‘ notice of them. This is grounded on the greatest  
 ‘ equity and reason, because that which concerns  
 ‘ all, should be debated by all: Nor is it possible for  
 ‘ a Parliament to debate, or to come to a clear resolu-  
 ‘ tion on any question, or to give any advice to her  
 ‘ Majesty, as they ought, without this freedom. I  
 ‘ have good authority to justify what I say; Sir Ro-  
 ‘ bert

‘ *bert Atkins* tells us, in his treatise of power and  
 ‘ privilege of Parliaments, of the case of one Sir  
 ‘ *Thomas Haxey*, in the time of King *Richard II.*  
 ‘ who having delivered a petition to the King, with  
 ‘ which he was displeased, the King sent to the  
 ‘ Speaker to know who it was that delivered that  
 ‘ petition; by which (says Sir *Robert*) *it is apparent,*  
 ‘ *the King cannot take notice of any thing done in Par-*  
 ‘ *liament,* (he names the House of Commons) *but as*  
 ‘ *it is represented to him by the house it self.*

‘ Having said this, give me leave to read to your  
 ‘ Lordships a paragraph of her Majesty’s speech to  
 ‘ her last Parliament last year: *My Lords and Gen-*  
 ‘ *tlemen, We have, by the blessing of God, a fair pro-*  
 ‘ *spect of this great and desirable end, if we do not dis-*  
 ‘ *appoint it by our own unreasonable humour and ani-*  
 ‘ *mosity, the fatal effects of which we have so narrow-*  
 ‘ *ly escaped in this session, that it ought to be a sufficient*  
 ‘ *warning against any dangerous Experiments for the*  
 ‘ *future.*

‘ I shall not go about to shew the grammatical  
 ‘ construction of these words, but chuse rather to  
 ‘ say, that as we enjoy many blessings under her Ma-  
 ‘ jesty’s happy government, so I hope we shall have  
 ‘ this too, that her Majesty will never give ear to  
 ‘ any secret and private information, but as it comes  
 ‘ to her in a Parliamentary way by the houses them-  
 ‘ selves.

‘ The last thing, my Lords, is that which I take  
 ‘ to be of the greatest concernment to us all, both  
 ‘ Queen and people; I love always to speak very  
 ‘ plain, and shall do so in this point.

‘ My Lords, I think there can be nothing more  
 ‘ for the safety of the Queen, for the preservation of  
 ‘ our constitution, for the security of the church, and  
 ‘ for the advantage of us all, than if the presumptive  
 ‘ heir to the crown, according to the act of settle-  
 ‘ ment in the Protestant line, should he here amongst  
 ‘ us; ’tis very plain, that nothing can be more for the  
 ‘ security

' security of any Throne, than to have a number of  
 ' successors round about it, whose interest is always  
 ' to defend the possessor from any danger, and pre-  
 ' vent any attempt against him, and revenge any in-  
 ' jury done him. Is there any man, my Lords, who  
 ' doubts that if the Duke of *Glocester* had been now  
 ' alive, her Majesty had not been more secure than  
 ' she is? We cannot think of that misfortune with-  
 ' out the greatest grief, but yet we are not to neglect  
 ' our own safety; and though a successor be not the  
 ' Child of the Prince, yet he is the child of the  
 ' Queen and people.

' Besides, my Lords, the heats and differences  
 ' which are amongst us, make it very necessary that  
 ' we should have the presumptive heir residing here:  
 ' The duty and respect we pay her Majesty, and  
 ' the authority of the law, can hardly keep us in  
 ' peace and union amongst our selves at present;  
 ' what then may we not fear, when these bonds shall  
 ' ever happen to be broken.

' And would it not be a great advantage to  
 ' the church, for the presumptive heir to be perso-  
 ' nally acquainted with the reverend the Prelates;  
 ' Nay, would it not be an advantage to all *England*,  
 ' that whenever the successor comes over, he should  
 ' not bring a flood of foreigners along with him, to  
 ' eat up and devour the good of the land.

' I will say no more to your Lordships, but con-  
 ' clude with this motion;

' That an humble address be presented to her  
 ' Majesty by this house, that her Majesty will be  
 ' graciously pleased to invite the presumptive heir to  
 ' the crown of *England*, according to the acts of  
 ' Parliament made for settling the succession of the  
 ' crown in the Protestant line, into this kingdom,  
 ' to reside here.

When the question was put, whether the house  
 of *Hanover* should be sent for over into *England* or  
 not?

not? The previous question being put, it past in the negative; notwithstanding which their Lordships were extremely zealous for the security of the *Hanover* succession, by an act of naturalization. And on the 21st, the Judges, according to order, brought in a bill to nominate these following Commissioners to act upon the decease of her Majesty, for the better security of the *Hanover* succession, viz. Archbishop of *Canterbury*, Lord High Admiral, Lord Keeper, Lord Treasurer, Lord Privy-Seal, Lord President of the Council, Lord Steward of the Household, and Lord Chief Justice of *England* for the time then being.

The Lords, on the 22d, having adjourned the debate touching the miscarriages of the last campaign, occasioned by the Allies, *sine die*, went upon the *Scotch* affairs (the Queen present) and ordered the Judges to bring in a bill for an union with *Scotland*, and that a Committee should sit thereon. On the 24th, they resolved, that thanks should be given to her Majesty for her great care touching *Scotland*, and for her good intentions, and for her care in promoting the interest of *Scotland* by the *Hanover* succession in the Protestant line. Resolved also, that all the clauses in the former act for an union with *Scotland* should be repealed, except that which empowered her Majesty to nominate Commissioners.

Pamphlets about this time flew about like hail, and the discontented in every corner were crying out the church's danger, and such surmises and insinuations made of it within doors, that, in order to the clearing up of these unreasonable and pretended jealousies, a certain noble Lord, moved, that a day might be appointed to enquire into this frightful scene of imaginary danger. The Lord *Rocheſter* began the debate, and told their Lordships, the subject matter of it was of so tender a nature, that it was difficult to speak to it: For her Majesty



Majesty had expressed her self so conclusively in her speech, that it seemed to be to contradict the Queen to speak freely; but in regard that the ministers might be supposed to compose the speeches, he desired that what he said might not be offensive to the Queen, to whom he had all the affection and respect that could be. He said, that ministers might mistake, and not always act for the publick good, and instanced in the ministry of *Portugal*, where the King was our Friend, the ministry seemed to be otherwise, insomuch, that that alliance was of no benefit to us: That the Duke of *Buckingham* and Archbishop *Laud* were hearty in the interest of King *Charles I.* and yet did many things that very much injured him. The full expressions in the Queen's speech he compared to the law in King *Charles* the second's time, to make it treason to call the King a Papist; for which very reason, he said, he always thought him so. The reasons he gave for his fear of the Church's danger arose from these three causes: First, The security act in *Scotland*: Secondly, The heir of the House of *Hanover* not being sent for over: Thirdly, The not passing the occasional bill. Upon the first he said, the Presbyterian Church in *Scotland* was fully established without a toleration, that to arm that people was to give them a power to invade *England*, where they had a powerful party for their friends, who never wanted the will to destroy the Church: That he thought the heir to the crown ought to be present among us, in order to be fully acquainted with us and our constitution, and thereby enabled to prevent any evil designs upon the Church and State: That the occasional bill was in it self so reasonable, and the church's request in it so small, that the industry in opposing it gave the greater ground for suspicion.

When that noble Lord had done, the house sat still a quarter of an hour, expecting some body would

second

second him; but no body else speaking on that side, the Lord *Halifax* said that he having moved for the present debate, it might be expected that he <sup>Lord Halli-</sup> ~~he~~ <sup>fax.</sup> should speak to it. He said, the act of security in *Scotland*, was a national thing wholly foreign to Church Affairs; that it was not passed but to prevent immediate War, which the *Scots* seemed to have resolved upon; that in case it should ever be made use of, it would be but as other wars with that nation had been, in former days, wherein *England* was always able to defend it self, and would sure hereafter be more able to do it, inasmuch as the strength of *England* was increased much more than that of *Scotland*; so that unless *France* should come into the quarrel, whose hands were already too full to do it, it would signify little: But blessed be God, things were so well compromised with the *Scots*, and their former heat so much abated, that there was no reason to doubt of an amicable issue of that difference: As to the House of *Hanover*, he said, that was a Danger of but eight days standing; for he durst say a fortnight ago, no Body made the absence of the Princess *Sophia*, a danger to the Church, and as for her absence upon the Queen's Death, that was now so well to be provided for by the act for Lords Justices, that he thought no evil could possibly happen to the Church before her arrival. That he wonder'd the House of *Hanover* should be now esteemed such a security to the Church, whereas when the laws were made for the security of that succession, it was generally reckoned a hardship upon the Church, and a Clergyman, in a company of convocation men, had openly called her an unbaptized *Lutheran*, the truth of which he could prove. As to the Occasional bill, he said that matter had been canvassed already, and it was then the opinion of that house, that it would not prove of any advantage and security to the Church, but rather the contrary. That upon the whole, there had been times in our memory, where-

in the church might be said to be in danger. King *Charles II.* was a Roman Catholick, at least his brother thought fit to declare it after his death, and the successor, who had the management of all affairs, was known to be such, and yet the church thought herself then secure, and those patriots that stood up in its defence, and endeavoured to prevent the evils which might ensue from a popish succession, were discountenanced and punished: Nay when that successor came to the throne, and that the church was very apparently in the greatest danger, by the high commission court and otherwise, we were then indeed generally alarmed, but we know who sat in that court and went large steps in the work then on foot. That soon after the accession of King *William* to the crown, this cry of the church's danger began, and was continued all his reign, but with what ground, he was yet unapprized: That upon her Majesty's happy succession, for some time the complaint was silent, but that when she was pleased to make some alterations in her ministry, it was immediately revived and had ever since continued; and then concluded that the church was now in no manner of danger.

Bp. of  
London,

This gave occasion to the Bishop of *London* to speak, he coming into the house just as the last words were delivered, and immediately took the other Lord up, giving for his reasons *That the Church was in danger*; that prophaneness and irreligion was so rife among us, and so intolerable the licentiousness of the press, from whence books proceeded not fit to be read, that a most vile one had been lately publish'd by a clergyman in his diocese (meaning *Hickeringhil*) whom he endeavoured to punish, but that he had such subterfuges in the quirks of the law, that he could not come at him; and that sermons were preached wherein rebellion was authorized, and resistance to the higher powers encouraged.

This



This was the substance of what his Lordship said, <sup>Bishop of Sarum.</sup> to which the Bishop of *Sarum* replied: That his Lordship ought to have been the last man to complain of that sermon (meaning *Hoadley's*, before the Lord-Mayor) for if the doctrine of that sermon was not good, he did not know what defence his Lordship could make for his appearing in arms at *Nottingham*. Then the Bishop proceeded to the question in debate; he began with a piece of *French* history in the reign of *Henry III.* (which he said had been much in vogue of late in a neighbouring house) [*Sir Humphry Mackworth* had made use of it] in whose time the Catholics set up the same cry of the church's danger from the *Hugonets*, and forced the King to comply with them; but that their power thereby becoming great, they turned it upon the King himself, and he found he should be thrust into a monastery, if he did not speedily crush them, and therefore stabbed the Duke of *Guise* their head: He then compared our state-affairs with the other, and imputed all this present clamour to the ambition and discontent of particular men. To the reasons that noble Lord (who began the debate) gave for the churches danger, he replied, that as to the *Scotch* affairs he was particularly acquainted with them, and therefore he would venture to speak with the more assurance; that the *Scotch Kirk* being established without a toleration, was an unfair allegation, for there needed no law for toleration, where there was no law to inhibit: The Episcopalians were not forbid to worship God their own way, being only excluded from livings, and that there were at that time fourteen Episcopal meeting-houses in *Edinburgh*, as open as the churches, and as freely resorted to, in many of which the *English* liturgy was used, but that in several of them the Queen was not prayed for; and the bill for giving patrons liberty of conferring their benefices on clerks episcopally ordained had passed (at least the King had allow'd it) if they would have put in a clause to oblige



them to take the oath to the government, but upon the offering that clause, the person that solicited it, let it drop: His Lordship who had mentioned the act of security, if he had looked two years backwards, might have found another law which seemed much more to his purpose, namely the act for confirming presbytery, 1 *Anne*; but his Lordship was a Minister of State, when that act passed, and so perhaps advised it: As to the argument of the *Hanover* family, it could not be observed that he offered any thing remarkable; and for that of Occasional Conformity; he said, it had been there already sufficiently argued, and he was glad that they were rid of it: But for what the noble prelate had advanced he must speak, and said indeed that the enmity of prophaneness and irreligion the Church would always be subject to: The devil would have his agents in the world, be the government never so careful; but, he hoped he might say, that irreligion and prophaneness were not now at an higher pitch than usually: That he hoped quite the contrary, and thought the society set up for reformation in *London* and other cities, had contributed considerably to the suppression of vice: He was sure the corporation for propagation of the gospel had done a great deal towards instructing men in religion, by giving away great numbers of books in practical divinity, by erecting libraries in country parishes, by sending over very many able divines to the foreign plantations, erecting libraries there for their use, and setting up schools to breed up the children in christian knowledge; that to his knowledge 1200 *l.* had been expended last year in books to these purposes, all collected by voluntary contributions; but in truth very little of it from those who appeared so wonderfully zealous for the Church. That the press was indeed become very licentious, and sermons were preached wherein very strange expressions were published. That he would read some of them to their  
Lordships,

Lordships, and then pulling out *Tilly's* and *Madder's* sermons, he read some paragraphs: These, said he, were what was preached at *Oxford*, and these are the men picked out for publick occasions: I must remark that both these Gentlemen are of a house, where a noble P—— makes his residence, when he honours that University with his presence.

Then the Lord Archbishop of *Y---k* stood up, <sup>Ld. A. B. of Y---k.</sup> and said, he apprehended danger from the encrease of dissenters, and particularly from the many Academies set up by them, and moved, That the Judges might be consulted what laws were in force against such seminaries, and by what means they might be suppress'd.

The Lord *Wharton* spoke next, and moved, that <sup>Ld. Wharton.</sup> the Judges might be consulted about the means of suppressing schools and seminaries held by non-jurors, in one of which a noble Lord of that house had both his sons educated: Upon which the A. B. stood up <sup>A. B. Y---</sup> again, and said, He supposed he was the person meant, and therefore he must explain that matter. He said, his two sons were taught by Mr. *Ellis*, a sober, virtuous man, and a man of letters, and who had qualified himself according to law when they were sent to him; but when the Abjuration-Oath was enjoined, that it seems he refused it, which, as soon as he was apprized of, he took his sons from him.

The Lord *Wharton* having made a reply to this, <sup>Ld. Wharton.</sup> went on, and said, that although he had been born and bred a dissenter, yet he soon conformed to the Church, when he grew up, and became acquainted with its doctrine and discipline; that he was now firmly resolved, by God's blessing, always to continue in that Church, and would go as far in defending it as any man: Wherefore if he were now sensible that it was in any danger, he would be heartily ready in providing remedies against it; but that,

after all the cry, and expectations they were screwed up to, of hearing wherein those dangers consisted, it appeared just as he expected, namely, that it was only repeating the *Memorial*, which pamphlet he had carefully read over, but could learn nothing from it, except that the D— of B—, the E— of R—, the E— of N—, were out of place. What these B's, R's, and N's meant, he could not tell; perhaps, there might be some charms in it for the church's security: But if those letters meant some noble Peers there present, he remembred very well, that some of them sat in the high commission-court, and then made no complaints of the church's danger; but now that we had a Queen, who was herself a real lover of the church, and had given such encouragement and bountiful tokens of her affection for it; we must be amused with the church's danger: But he concluded with being of opinion, that the church was in no danger.

Bishop of  
*Ely*.

The Bishop of *Ely* stood up, and moved that the Judges also might be consulted what power the Queen had in visiting the universities, complaining of the heat and passion of the Gentlemen there; which they inculcated into their pupils, who brought the same fury with them to the parishes, when they came abroad, to the great disturbance of publick charity; that at the election at *Cambridge* 'twas shameful to see 100 or more young students, encouraged in hollowing like school-boys and porters, and crying out, *No fanatick, no occasional conformity*, against two worthy Gentlemen that stood candidates. Then he complained of the undutifulness of the clergy to their Bishops, and the difficulty they had to govern them regularly.

Bishop of  
*Litchfield*  
and *Coven-*  
*try*.

The Bishop of *Litchfield* and *Coventry* made the same complaint. He spoke of the opprobrious names the clergy gave their Bishops, and of the calumnies they laid on them, as if they were in a plot

plot to destroy the church, and had compounded to be the last of their order, and when the plot was ripe, to resign their bishopricks, and accept a pension for life. He alledged, that the church was as well governed as it had at any time been; challenged any body to charge the Bishops with any omission of their duty, or any action wherein they strained or injured any body. Then he spoke of the honour he had had to suffer in a good cause, and thought that might have protected his reputation from the calumny of being an enemy to the church.

The Bishop of *Bath and Wells* also spoke, and complained of the terms of the high church and low church; that it was an invidious distinction, tending to set us at enmity; that by high church, people were made to believe a man inclined to popery, or, at least, one that endeavoured to carry church power beyond our constitution, which he thought was great injustice, the Gentlemen that bore that character meaning nothing more, than to keep up to the just dignity and discipline of the church. Neither did he believe, that the others, called low church, had any designs of lowering or levelling it with presbytery, as was on the other hand maliciously suggested.

The Duke of *Leeds* stood up, and said, he apprehended the church was in danger, and could not be safe without the act against occasional-conformity, and that the Queen had in discourse with him declared herself of that opinion.

The Lord *Somers* recapitulated all the arguments on both sides, added his own judgment, and ended with a declaration, that the nation was happy under a most wise and just administration, wherein the publick money was justly applied, the treasury kept in a most regular method, and thereby the publick credit in the highest esteem, the armies and fleets were supplied, and the success of her Majesty's arms



and the nation greater honour and reputation, than had been known, and that we had a fair prospect of bringing the war to a happy conclusion, to the immortal honour of the present age, and the inexpressible benefit and safety of posterity: Wherefore for men to raise groundless jealousies at this time of day, it could mean no less, than an intention to imbroider us at home, and to defeat all those glorious designs abroad.

Church  
voted in no  
danger.

The debate at length being over, the question was put, whether the church of *England* was in danger, or not? And upon a division, it was carried in the negative: *no's* 61, *yea's* 30, the Queen present. Next day the Lords sent a message to the Commons, to acquaint them with their proceedings touching the church, and desiring their concurrence to the following resolve, *viz.* 'Resolved by the Lords 'spiritual and temporal, and Commons in Parli- 'ament assembled, that the church of *England*, as 'by law established, which was rescued from the ex- 'tremest danger by King *William* the third, of glo- 'rious memory, is now, by God's blessing, under 'the happy reign of her Majesty, in a most safe and 'flourishing condition, and whosoever goes about to 'suggest and insinuate, that the church is in danger 'under her Majesty's administration, is an enemy to 'the Queen, the church and the kingdom.' This reso- lution being carried in the house of Lords, as afore- said, by so great a majority, the opposite side, how- ever, entred the following reasons for dissenting.

#### *Dissentient,*

1. Because we humbly conceive, there may be dangers to the church always impending on several accounts, the prayers set forth to be used on the solemn fasts-days, under the head of a prayer for unity, imploring God Almighty's grace, that every body may seriously lay to heart the great dangers we are in by our unhappy divisions, shew plainly, that

that in the opinion of the compilers of the form of that prayer, and in her Majesty's judgment, who commands it to be used in all the churches and chapels throughout *England* and *Wales*, there are very many dangers.

2. We humbly conceive the church in danger from a neighbouring kingdom, which, tho' under her Majesty's sovereignty during her life, (which God long preserve) hath not, by any means, yet been induced, to settle the same succession to the crown, as is established by law in this kingdom in the protestant line; but, on the contrary, that succession has been abrogated by the act of security, which, with several other acts, passed in that kingdom, has been judged by this house, in the last Parliament, to be dangerous to the present and future peace of this kingdom; and therefore we may justly fear there are dangers from hence both to church and state.

3. We humbly conceive, there may be very great dangers to the church, for want of a law to prevent any persons whatsoever from holding offices of trust and authority, both in church and state, who are not constantly of the communion of the church established by law; and therefore on the account of the unhappy divisions in the kingdom, in points of religion and divine worship, as also, on the account of the calamities of this age, in the too publick and common disowning any religion at all, the church may be in danger.

4. Tho' we have an entire confidence in her Majesty's zeal and piety to the church, we dare not in duty to her Majesty and the service of the government, condemn all such as may have fears, in relation to the preservation of the church, and safety of the crown.

5. Being sincerely convinced that these reasons, among some others mentioned in the debate, are sufficient

ficient to justify our fears, we humbly conceive, that it is not a proper way to prevent dangers, by voting there are none.

<i>Buckingham.</i>	<i>Craven.</i>
<i>Northampton.</i>	<i>Chandois.</i>
<i>Cornarvon.</i>	<i>Guernsey.</i>
<i>Weymouth.</i>	<i>Tbanet.</i>
<i>Osborn.</i>	<i>Scarsdale.</i>
<i>Denbigh.</i>	<i>Rocheſter.</i>
<i>George, Bath and Wells.</i>	<i>Conway.</i>
<i>Granville.</i>	<i>Howard Eſcrick.</i>
<i>Beaufort.</i>	<i>Henry, London.</i>
<i>Wincheſea.</i>	<i>Leeds.</i>
<i>Nottingham.</i>	<i>Guilford.</i>
<i>North and Grey.</i>	<i>Abingdon.</i>
<i>Angleſea.</i>	<i>Haverſham.</i>

The Archbiſhop of *York*, and Biſhop of *Rocheſter*, proteſted ſince.

Now the Commons on the 8th, taking the reſolution of the Lords into their conſideration, the queſtion was put whether they ſhould refer the ſame to a Committee of the whole houſe, and carried it for the latter, *yea's* 220, *no's* 157; and agreeing with the Lords to fill the blank their Lordſhips had left for the word Commons, in the reſolve, they likewiſe agreed with them upon an addreſs to her Majeſty, (who, on the 3d, was pleaſed to give the royal aſſent to, *An act for exhibiting a bill in this preſent Parliament, for naturalizing the moſt excellent Princeſs Sophia, Electreſs and Dutcheſs Dowager of Hanover, and the iſſue of her body.*) They preſented it on the 14th, to this effect.

Parliament's  
addreſs to  
the Queen.

**WE** your Majeſty's moſt dutiful and loyal ſubjects, the Lords ſpiritual and temporal, and Commons, in Parliament aſſembled, having taken  
into

‘ into consideration your Majesty’s most gracious  
 ‘ speech at the opening of this Parliament, have upon  
 ‘ mature deliberation come to the following resolution.

‘ *Resolved, by the Lords spiritual and temporal, and  
 ‘ Commons in Parliament assembled, That the church of  
 ‘ England, as by law established, which was rescued  
 ‘ from the extreamest danger by King William the third,  
 ‘ of glorious memory, is now, by God’s blessing, under  
 ‘ the happy reign of her Majesty, in a most safe and  
 ‘ flourishing condition; and that whoever goes about to  
 ‘ suggest and insinuate, that the church is in danger  
 ‘ under her Majesty’s administration, is an enemy to  
 ‘ the Queen, the church, and the kingdom.*

‘ Which we humbly beg leave to lay before your  
 ‘ Majesty, and as your Majesty has been pleased to  
 ‘ express a just indignation against all such wicked  
 ‘ persons, so we assure your Majesty, that we shall  
 ‘ be always ready, to the utmost of our power, to assist  
 ‘ your Majesty in discountenancing and defeating  
 ‘ their practices: And we humbly beseech your  
 ‘ Majesty, to take effectual measures for the making  
 ‘ the said resolution publick, and also for punishing  
 ‘ the authors and spreaders of these seditious and  
 ‘ scandalous reports; to the end that all others may;  
 ‘ for the future, be deterred from endeavouring to  
 ‘ distract the kingdom, with such unreasonable and  
 ‘ groundless distrusts and jealousies. To this her  
 ‘ Majesty was pleased to answer.

My Lords and Gentlemen,

**I** Shall readily comply with your address, and am very  
 well pleased to find both Houses of Parliament so forward  
 to join with me, in putting a stop to these malicious reports,

The 19th an ingrossed bill from the Lords, entitled,  
*An act for the better security of her Majesty’s person*



*person and government, and of the succession to the crown of England in the protestant line, was read a second time, and Charles Caesar, Esq; upon the debate of the said bill, standing up in his place, and saying the words following; (which were directed by the house to be set down in writing at the table) there is a noble Lord, without whose advice the Queen does nothing, who in the late reign was known to keep a constant correspondence with the court at St. Germain's. And the said Mr. Caesar endeavouring to excuse himself, and being called upon to withdraw, and he being withdrawn accordingly, and a debate arising thereupon; the house resolved, that the said words are highly dishonourable to her Majesty's person and government. And, that the said Charles Caesar Esq; should for his said offence be committed prisoner to the Tower.*

Pursuant to the address above mentioned, on the 10th the following proclamation was published.

#### ANNE R.

Queen's  
Proclamation  
on about the  
church.

‘ **W** Hereas of late several persons endeavouring  
‘ to foment animosities, and to cover designs  
‘ which they dare not publickly own, have falsely,  
‘ seditiously, and maliciously suggested, the church  
‘ of *England* as by law established, to be in danger,  
‘ at this time, whereof we thought fit to take notice  
‘ in our speech made at the opening of this Parlia-  
‘ ment: And whereas the Lords spiritual and tem-  
‘ poral, and Commons in Parliament assembled,  
‘ have by their humble address represented to us,  
‘ that having taken into consideration our said most  
‘ gracious speech, they had, upon mature deliberati-  
‘ on, come to a resolution, which they laid before  
‘ us, assuring us, that as we had been pleased to ex-  
‘ press a just indignation against all such wicked per-  
‘ sons, they will be always ready, to the utmost of  
‘ their power, to assist us in discountenancing and  
‘ defeating

‘ defeating their practices, humbly beseeching us to  
‘ take effectual measures for the making the said re-  
‘ solution publick, and also for punishing the authors  
‘ and spreaders of these seditious and scandalous re-  
‘ ports, to the end that all others may, for the future,  
‘ be deterred from endeavouring to distract the king-  
‘ dom, with such unreasonable and groundless dis-  
‘ trusts and jealousies : We therefore at the said  
‘ humble request of the Lords spiritual and tempo-  
‘ ral, and Commons in Parliament assembled, do by  
‘ this our royal proclamation, make publick the  
‘ said resolution, which follows in these words :

*Resolved,*

‘ *By the Lords spiritual and temporal, and Com-  
‘ mons in Parliament assembled, that the church of  
‘ England, as by law established, which was rescued  
‘ from the extremest danger by King William  
‘ the third, of glorious memory, is now by God’s  
‘ blessing, under the happy reign of her Majesty,  
‘ in a most safe and flourishing condition ; and that  
‘ whosoever goes about to suggest and insinuate, that  
‘ the church is in danger under her Majesty’s admi-  
‘ nistration, is an enemy to the Queen, the church,  
‘ and kingdom.*

‘ And we do hereby, by the advice of our Privy-  
‘ Council, declare, that we will proceed with the  
‘ utmost severity the law shall allow of, against the  
‘ authors or spreaders of the said seditious and scan-  
‘ dalous reports. And we do hereby strictly charge  
‘ and command all and singular our Judges, Justices  
‘ of the peace, Sheriffs, Mayors, Bailiffs, and all other  
‘ our ministers whatsoever, to take effectual care for  
‘ the speedy apprehension, prosecution and punish-  
‘ ment of all such persons, who have or shall at any  
‘ time hereafter offend herein. And we do hereby  
‘ further require and command all our loving sub-  
‘ jects whatsoever, to discover and apprehend all  
‘ and every person and persons whatsoever offending,

' as aforesaid, to the end they may be dealt with and  
 ' proceeded against according to law. And whereas  
 ' the said seditious and scandalous reports have  
 ' been greatly promoted and spread, by the printing  
 ' and publishing of a malicious and seditious libel,  
 ' intituled, *The Memorial of the Church of England,*  
 ' *humbly offered to the consideration of all true lovers of*  
 ' *our church and constitution:* And whereas *David*  
 ' *Edwards*, of the parish of *St. Dunstan's in the West,*  
 ' *London*, Printer, is charged on oath to be the prin-  
 ' ter and publisher of the said libel, and is now un-  
 ' der prosecution for the same, and on that account  
 ' absconds from justice, and the author or authors  
 ' of the said libel is, or are not discovered, we do  
 ' hereby further require and command all our loving  
 ' subjects whatsoever, to discover and apprehend the  
 ' said *David Edwards*, and the author or authors of  
 ' the said libel, to the end they may be dealt withal,  
 ' and proceeded against according to law, &c.

*The End of the* **FOURTH VOLUME.**

